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OPINION

CURTIS **Comprehensive Urban Retail Trade** **Improvement Strategy**

- VITAL CITIES Results –

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compiled by

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Introduction

This Opinion presents a summary of the European project VITAL CITIES. The VITAL CITIES project was approved in 2004 as an INTERREG IIIB project. The partners in the project are representatives of public institutions and private business from seven European countries. The partners worked closely with one another between 2004 and 2006 in order to achieve the objective of vibrant inner cities, of “VITAL CITIES”, in Europe. This objective is oriented to the European Spatial Development Perspective (ESDP), which was adopted in 1999 by the ministers responsible for spatial development. The goal of European spatial development set out there is oriented to the guiding model of a “compact city”. The trend towards further expansion of cities is to be controlled and the expansion of settlement areas minimized within the context of careful site and settlement policies.

The VITAL CITIES project investigated between 2004 and 2006 how the objective of a “compact city” can be realized in Europe with regard to retail trade. The starting point for the project was the fact that the towns and cities in Europe all face similar challenges. Retail trade structures are shifting towards the periphery of towns and cities and are being carried into effect there in previously unknown dimensions. Western forms of shopping have become established in the countries of Eastern Europe in recent years, in these countries traditional retail trade structures have been ousted from the market within a very short period and replaced by new structures.

The VITAL CITIES project demonstrates how an innovative approach to steering can realize the aim of “compact cities”. This final report presents an overview of the results of the project. In the first chapter the development of retail trade in Europe is discussed (I). In the second chapter (II) the initiatives are presented which were initiated within the context of VITAL CITIES. An overview of the program of VITAL CITIES is provided. Chapters III and IV take a look at the legal structures governing the realization of vibrant inner cities in Europe. The focus in chapter III lies on supra-national law, and in the following chapter IV the national legal systems are examined. The results of the comparison of laws are presented in chapter V. Chapters VI and VII consolidate the results of VITAL CITIES and draft a strategy for steering the settlement of retail trade in Europe during the coming years. This strategy bears the heading **CURTIS** (Comprehensive Urban Retail Trade Improvement Strategy) and constitutes a proposal which is to be taken up in coming years by the decision-makers in Europe. To this end a “European Charta” for a network of VITAL CITIES was drawn up, which is presented in chapter VII.

I. Development of Retail Trade in Europe

1. Internationalization, Concentration and Expansion of Space

The title of the VITAL CITIES project refers to a “vibrant inner city”. In substance the project deals with a significant area of business, namely retail trade. This divergence arises from a particular significance of retail trade for the urban business structure and for urban life: Traditionally, retail trade in Europe was sited in towns and cities and was a particular feature of the urban landscape.¹

The traditional ties between retail trade to town and city centres have been relaxed in recent years. To an increasing extent, large-scale retail trade projects are now settled at non-integrated sites. There is a threat that towns and cities will no longer be the centre of shopping life and will lose in significance. This threat is the result of structural changes in retail trade, which can be described by the terms internationalization, concentration and expansion of space.

These three terms describe the development of retail trade in Europe, in which respect there are in some cases considerable divergences among the individual countries.² In comparison with the U.S.A. or Japan, the retail trade structure in Europe is characterized by the relatively small size of its businesses. The largest businesses can be found in the United States with an average of 12.6 employees per business, in Japan on average 6.4 persons are employed per business and in the EU the number of employees per business is 4.7. In this respect, however, it should be taken into account that owing to the high cost of personnel in Europe vis-à-vis the U.S.A., the number of employees per m² of retail trade space is lower.

The term “internationalization” describes the increasing networking of international business processes. Large retail trade enterprises make the major part of their turnover in various European countries. This applies for example to the Metro Group, which makes 47% of its turnover abroad. The Aldi Group is also engaged internationally. Of the approximately 6,600 stores throughout

¹ Böhme, *Nordic Echoes of European Spatial Planning: Discursive Integration in Practice*, Stockholm, 2002, at 217; Blotevogel (Ed.), *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, Hannover, 2002, at 271.

² Howe (Ed.), *Retailing in the European Union; Structures, Competition and Performance*, 2003.

the world, about 2,800 stores are located in other European countries.³ The Walmart Group is a U.S. retail trader which has been expanding onto the European market since 1997.⁴ Among the 20 largest retail trade enterprises with their headquarters in Europe are six German, five British and five French enterprises. The foreign turnover shares of these enterprises are between 8% and 47%.⁵ In some cases European retail trade enterprises are also present on other continents. For example, the Dutch Ahold Group makes 45% of its turnover in non-European countries, the Belgium group Delhaize “Le Lion” even makes 58% of its turnover in non-European States.⁶ The internationalization of retail trade is driven forward in Europe by French and German enterprises in particular. The French enterprises place their bets on hypermarkets and supermarkets, the Germans seem to prefer discounters. The retail trade enterprises pursue different strategies in order to be successful on foreign markets. In some cases inherent growth is preferred, i.e. the company’s own sales network in the foreign country. In some cases, however, joint ventures are formed, i.e. a cooperation between foreign enterprises and national enterprises. This strategy is pursued by European enterprises especially on the markets of Southern Europe, Latin America and Asia.

Apart from internationalization, a concentration of retail trade can be observed. The term “concentration” describes the increasing density of market shares of retail trade enterprises for their relevant markets. This concentration comes about firstly due to the amalgamation of companies, secondly, retail traders are integrated into franchise chains. The trade in foodstuffs in particular is characterized by the concentration process in Europe. However, the degree of intensity varies among the individual European countries. The concentration of enterprises per 10,000 citizens is between 123-142 enterprises in Spain, Italy and Portugal and hence considerably higher than the European average, whereas it is 37 enterprises per 10,000 citizens in the U.K., and thus significantly below average.⁷ The number of employees in the individual enterprises also varies considerably. In Spain, Italy and Portugal there are on average 3 employees. The largest enterprises with an average between 7 and 9

³ Source: www.wikipedia.de.

⁴ Gotterbarm, US-amerikanische Einzelhandelsunternehmen in Deutschland, Fakten, Trends und Theorien, 2004, at 113-187.

⁵ Rudolph/Potz/Bahn, Metropolen handeln, 2005, at 38.

⁶ Eurostat (Ed.), Handel in Europa, 2001, at 175.

⁷ Eurostat (Ed.), Handel in Europa, 2001, at 99; Rudolph/Potz/Bahn, Metropolen handeln, 2005, at 36.

employees can be found in Germany, the Netherlands and Austria. No information was provided regarding the number of employees per business in the U.K.⁸ Among the retail trade enterprises in Europe with the highest turnover are the French enterprise Carrefour (EUR 61 billion turnover in 2003), the German enterprise Metro AG (EUR 51.7 billion turnover in 2003) and the British enterprise Tesco Plc. (EUR 40.6 billion turnover in 2003).

The third central development in retail trade is the triumphal march of large-scale businesses from the 1960s onwards.⁹ Basically speaking, three waves of new forms of businesses in retail trade can be outlined. In the late 1960s, the first wave of consumer markets was established in the area of foodstuffs. For the most part these markets replaced small food shops. During the second wave furniture stores and building material stores, gardening and DIY stores entered the field. The third and current wave is characterized by the expansion of large-scale retail trade businesses.¹⁰

Under the heading “centralization”, one can observe new forms of selling dominating retail trade in Europe. To an increasing extent shopping centres are set up in or on the periphery of town and city centres. In Sweden, France, the Netherlands, and the U.S.A., there are more shopping centres, calculated in m² per citizen, than in other European countries.¹¹ In the year 2000 there were 279 shopping centres in Germany with a sales area of over 10,000 m², a further 136 shopping centres are planned for the period between 2004 and 2010.¹² In France and in the U.K. hypermarkets are particularly well represented.¹³ This centralization initially dominated the development of retail trade in West European countries, albeit with a different emphasis in each individual country. During recent years the centralization tendency has gained an influence in East European countries as well. For example, in the year 2004 alone 12 shopping

⁸ Eurostat (Ed.), *Handel in Europa*, 2001, at 101.

⁹ Miosga, *Konsum, Einzelhandel und Dienstleistung: Trends und Rahmenbedingungen*, in: Blotevogel (Ed.), *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, 2002, at 78-90 (79).

¹⁰ Schmitz/Federwisch, *Einzelhandel und Planungsrecht, Schaffung von Baurecht für Einzelhandelsvorhaben unter Berücksichtigung des Europarechtsanpassungsgesetzes Bau (EAG Bau)*, 2005, at 24.

¹¹ Eurostat (Ed.), *Handel in Europa*, 2001, at 99; Rudolph/Potz/Bahn, *Metropolen handeln*, 2005, at 197.

¹² Schmitz/Federwisch, *Einzelhandel und Planungsrecht, Schaffung von Baurecht für Einzelhandelsvorhaben unter Berücksichtigung des Europarechtsanpassungsgesetzes Bau (EAG Bau)*, 2005, at 25 with further references.

¹³ Eurostat (Ed.), *Handel in Europa*, 2001, at 99; Rudolph/Potz/Bahn, *Metropolen handeln*, 2005, at 198.

centres with over 10,000m² of sales space were built in Lithuania. For 2005 over 100 shopping centres are planned in the Baltic States by the market leader.¹⁴ This expansion of space has given rise to new forms of shopping, bearing the heading “urban entertainment centre” and connecting shopping with leisure experience.¹⁵

2. Particularities of the Development of Retail Trade in Central and East European Countries

Retail trade in Central and East European countries is a special issue. Until the changes in the political system in the year 1990, retail trade in these countries was for the most part separated from the developments in other countries of Europe. Until then retail trade was characterized predominantly by small-scale shops. Shortly after the changes in the political systems in 1990, Western investors in particular entered the East European markets. Whereas there were several stages in the replacement of traditional shopping structures in Western Europe, the observation for Central and East European countries is that new forms of shopping established themselves on the market within a very short time.¹⁶

In the first wave of expansion by West European investors were German and Austrian enterprises, the Dutch Ahold Group and the Swedish company IKEA, in the early 1990s.¹⁷ French retail trade enterprises entered the East European market only from the mid-1990s onwards. This internationalization of Central and East European market can be observed in all VITAL CITIES countries. In the Czech Republic, for example, predominantly German, Dutch and Belgium

¹⁴ Source: www.vpmarket.lt.

¹⁵ Mösel, *Kombinierte Großprojekte des Handels und der Freizeit als Impulsgeber für die Stadtentwicklung*, 2002.

¹⁶ Pütz, *Transformation des polnischen Einzelhandels zwischen interner Restrukturierung und Internationalisierung. Das Beispiel Wrocław*, in: Kovács and Wießner (Eds.), *Prozesse und Perspektiven der Stadtentwicklung in Ostmitteleuropa*, 1997, at 141-156; Pütz, *Einzelhandel im Transformationsprozess, Das Spannungsfeld von lokaler Regulierung und Internationalisierung am Beispiel Polen*, 1998; Newman/Thornley, *Urban Planning in Europe, international competition national systems and planning projects*, 1996, at 23-26; Sykora, *Commercial Property Development in Budapest, Prague and Warsaw*, in: Enyedi, (Ed.), *Social Change and Urban Restructuring in Central Europe*, 1998, at 109-136.

¹⁷ Eurostat, (Ed.) *Handel in Europa*, 2001, at 186.

enterprises are represented and hold a significant share in the Czech retail trade market.¹⁸

3. Challenges for Town and City Centres in Europe

The towns and cities started to address the phenomena described above more earnestly from the mid 1990s onwards. Strategies for action were drawn up in order to counteract the settlement of retail trade structures in Europe.¹⁹ A summary of the new approaches can be found e.g. in the study on *business sites in town and city centres and greenfield sites* published by the German association in 1997, which contains a summary of the new approaches from the European perspective.²⁰

The development of towns and cities in Central and East European countries was disjointed from the steering of retail trade projects as regards time. In the years after 1989/1990 there was a first “wild phase” of urban development in the main cities of Central and Eastern Europe. At that time urban planning was non-existent or minimal in scope. The consequence of this was that suburbanization tendencies emerged within a very short time in the main cities of Eastern Europe, and steering instruments were not applied.²¹

¹⁸ The association for market and sales research, Gesellschaft für Markt- und Absatzforschung (GMA), presented a list of existing factory outlet centres in Europe in September 2005 (www.gma.diz).

¹⁹ Rudolph/Potz/Bahn, *Metropolen handeln*, 2005, at 114.

²⁰ Blatt/Raczeck, *Wirtschaftsstandort Innenstadt und „Grüne Wiese“*, 2nd ed., 1998.

²¹ Fassmann/Matznetter, *Stadtentwicklung in Ostmitteleuropa: Konvergenzen, Divergenzen, Transformation in: Geografische Rundschau* 57 (2005), at 52-59.

II. Initiatives to Strengthen Town and City Centres Within the Context of VITAL CITIES

The VITAL CITIES project is supported by project partners from all VITAL CITIES countries, and both private industry and publicly funded institutions are represented. The project partners are united by their interest in attractive town and city centres in which retail trade is to play a vital role.

The project work as such is independent of the structure of the project, which is organized in a spirit of partnership. In so-called subprojects, work took place on individual issues of the development of town and city centres in Europe. These subprojects served to set up a transfer of knowledge within Europe or to improve the knowledge on the development of retail trade in Europe. Each individual subproject pursued its own approach. The aim of this was to illustrate the development of town and city centres using different methods and from different perspectives. The research ranged from legal studies on consumer behaviour to aid provided for specific local or regional projects. An overview of the individual projects is provided below and at the same time the material results of the subprojects are summarized.

1. Transfer of Experience and Knowledge – International Retail Trade Forums

One of the main objectives of VITAL CITIES is to achieve an exchange of experience among the project partners, representatives of retail trade, urban planners, local politicians and all other interest groups connected with steering retail trade. A significant contribution to this exchange was made by so-called retail trade forums which were held at regular intervals during the project period in the project countries of VITAL CITIES. These retail trade forums were characterized by discussion contributions of political decision-makers, representatives of investors, providers of financial services, urban planners, architects and other specialists, and in each case expert information on the retail trade situation in the host city was provided.

Within these forums the partners of the projects reported on the progress of their individual projects. Secondly, representatives of business and political decision-makers at the municipal, regional and national levels were given an opportunity to state their views on steering retail trade in the countries of the project. This made it possible to disseminate and discuss the VITAL CITIES

concept within the project countries and, secondly, the retail trade forums contributed to an exchange of views among the experts.

The following individual retail trade forums and similar events took place

- Kick-Off-Meeting in Potsdam, 22/23 April 2004
- Retail trade forum in Brescia, 1 + 2 December 2004
- Retail trade forum in Vienna, 10 February 2005
- Retail trade forum in Danzig, 10 June 2005
- Retail trade forum in Poznan, 30 September 2005
- Retail trade forum in Potsdam, 19 October 2005
- Retail trade forum in Milan, 11 November 2005
- Retail trade forum in Prague, 9 December 2005
- Retail trade forum in Budapest, 10 February 2006
- Final Conference in Berlin, 12 May 2006.

The program of each individual event together with the documentation of contributions can be found on the homepage of VITAL CITIES at www.vital-cities.eu/events/events.html. Among those who gave speeches at the individual retail trade forums are persons from various areas connected with the objectives of VITAL CITIES. Political decision-makers such as Dr. Michael Häupl (Lord Mayor of Vienna), Pawel Adamowicz (Lord Mayor of Danzig), Dr. Michael Freytag (Senator of the Free City of Hamburg), Ms. Junge-Reyer, Senator in Berlin for urban development, the Czech Secretary of State Jan Slanina, Dr. Engelbert Lütke Daldrup, State Secretary, all took the opportunity to discuss the political objectives of VITAL CITIES at the German Federal Ministry of Transport, Construction and Urban Development in Berlin and to present their own concepts for steering retail trade. From the industry side, a representative of trade organizations was present at the forums as a speaker, e.g. the President of the Commerce Association BAG, Rolf Pangels, the Managing Director of the Commerce Association Berlin-Brandenburg, as well

as Brigitte Jank as the President of the Chamber of Commerce of Vienna, and Mr. Busch-Petersen. Numerous retail trade enterprises participated in the forums, for example, the project development enterprise ECE which staged five of the retail trade forums, as well as other enterprises such as Metro AG, Karstadt Warenhaus GmbH and C&A.

The object of the retail trade forums was to initiate a discussion among the main interest groups. Political decision-makers were given a platform as were representatives of industry. It was thus able to initiate cooperation structures (networks) and to discuss the question of how to improve investment decisions for inner city areas.

In addition to the exchange of views on the objectives of VITAL CITIES and how to implement them, a further purpose of the retail trade forums was to report on the progress of the project itself. Consequently, representatives of the subprojects illustrated the progress of their projects at the forums. The retail trade forums thus became a forum for informal and formal discussion about the possibilities of steering.

Between 200 and 400 participants attended the events. The guiding model of VITAL CITIES was discussed intensely in all countries, and its objectives met with a substantial degree of agreement. At the individual retail trade forums it emerged that steering retail trade and the revitalization of town and city centres is increasingly perceived as an important issue in Central and East European countries as well.

The final conference on VITAL CITIES took place in May 2006 under the patronage of the German Minister Wolfgang Tiefensee. The aim of the conference was to draw together the conclusions of VITAL CITIES, to reach political conclusions based on the results and – as a result of the political debate – to sign a charta of objectives for steering retail trade in Europe.

2. Empirical Analysis – Survey on Consumer Behaviour 2004 (Commerce Association BAG)

Within the context of VITAL CITIES, the commerce association BAG conducted an extensive survey on consumer behaviour. The association BAG is one of the most important commerce associations in retail trade in Europe. It has conducted retail trade surveys in more than 150 German towns and cities

since 1965. Through the survey conducted within the context of VITAL CITIES, a survey on retail trade consumer behaviour in Central and Eastern Europe has now been presented.

The BAG survey on consumer behaviour was conducted in 11 European towns and cities. All towns and cities are located within the survey area of VITAL CITIES, namely:

- Bamberg
- Budapest
- Bucharest
- Danzig
- Frankfurt/Oder
- Pecs
- Poznan
- Potsdam
- Prague
- Warsaw
- Vienna

The surveys were conducted on Saturdays on which shops were open, between 8:00 hours and 20:00 hours. The aim of the surveys was to present a comprehensive picture of shopping behaviour in the towns and cities investigated, in order to ascertain how attractive town and city centres are and where consumers perceive a need to take action. For this reason consumers were also questioned about the attractiveness of the town or city centre. The factors asked about which determine the attractiveness of a town or city centre were the range of products on offer, pricing, satisfaction with pricing, the question of the most important shopping possibilities, the possibility of accessing the town or city centre and the buying quota.

The results of the survey are very significant for the VITAL CITIES project. It became clear, firstly, that the possibility of accessing the inner city was a central criterion for customers when selecting a shopping location. It became clear that the possibility of reaching the town or city centre by public transport was predominantly seen positively in the towns and cities investigated. With the exception of Bucharest, consumers are for the most part satisfied or very satisfied with the possibility of reaching the city centre by public transport. The situation is different for consumers wishing to access town and city centres by car. This possibility is judged to be considerably poorer. The result of the study is that the excessive regulation of the possibility of reaching town and city centres by car tends to deter consumers and is detrimental to city-centre sites.

The survey showed clearly the considerable differences in attractiveness among the towns and cities investigated. The towns and cities in Central and European countries in particular are relatively unattractive. This applies for example to Bucharest, where 94% of consumers originated from the city itself. This figure is also relatively high for Budapest, namely 89%. It became clear in the survey that in many regions of Europe the town or city centre is just one of several shopping options.

The BAG survey on consumer behaviour in the 11 above-mentioned European countries forms an important basis for the development of strategies in order to enhance the attractiveness of town and city centres. The results of the survey are published on the homepage of the commerce association BAG (www.bag.de). The homepage also contains extensive data material summarizing and analyzing the responses of the consumers questioned. The BAG survey made clear that similar surveys should be conducted in other towns and cities of Central and Eastern Europe at regular intervals. This would enable changes in the retail trade structure to be recorded precisely.

3. Legal Steering Instruments – Opinion prepared by NÖRR STIEFENHOFER LUTZ

VITAL CITIES presents not only “soft” steering possibilities for the revitalization of inner-city areas, but also presents “hard” steering instruments in order to contribute to the revitalization of town and city centres in Europe. To this end the law firm NÖRR STIEFENHOFER LUTZ undertook to prepare a presentation of planning law in the VITAL CITIES project countries and to

present the legal issues which are relevant to the question of investments in retail trade enterprises within the town or city centre.

The law firm NÖRR STIEFENHOFER LUTZ presently has approximately 330 lawyers, tax advisers and CPAs at 11 office locations, and a representative office in New York, and is hence one of the major law firms in Europe. NÖRR STIEFENHOFER LUTZ came into question for preparation of the legal opinion especially because it has offices in almost all VITAL CITIES countries and hence is one of the few law firms with its own network in the Central and European states. Due to this local expertise and networking within the law firm, it was possible to ensure an intensive exchange of views among experts regarding the steering instruments available in the VITAL CITIES countries.

The structure of the legal opinions first provides an overview over the government organization and administrative structure, thus illustrating competence structures regarding the steering of retail trade projects. Public law and planning law in particular form a second focus. In this section of the opinions the individual steering instruments in the project countries for steering the settlement of retail trade projects are discussed. The political concepts behind each individual legal solution are also explained. In the next section the legal provisions governing investment decisions in the relevant countries are addressed. This includes an overview of the acquisition of real estate, the transfer of real property, of commercial rent law, competition law and the law on food stuffs. Consequently, the object of the legal opinions is firstly to explain the instruments determining a decision on siting and secondly to create transparency for investors as regards the legal framework conditions.

Through the dual objective of the legal opinions it becomes clear that VITAL CITIES is not simply a project for the settlement of retail trade projects in town and city centres, but, rather, that it is a project which also aims to provide support and guidance throughout investment decisions. In this respect the legal opinions are understood as an addition to the formation of networks during the individual retail trade forums.

The legal opinions prepared by the law firm NÖRR STIEFENHOFER LUTZ are published on the homepage of VITAL CITIES with reference to public law (www.vital-cities.eu/subprojects/subprojects_30.html). The legal opinions were summarized within a separate study, and a comparison of laws has been

made. The comparison serves to pinpoint developments in planning law in Europe. It is thus possible to create a basis for the development of a model for steering retail trade structures in Europe as a whole. This is consistent with the European approach of the VITAL CITIES project: It is no longer enough to conceive national solutions, rather, a European approach has to be taken and European networks established.

4. On Site Initiative I: Fitness Program for Bamberg (Bavarian State Ministry for Economics, Infrastructure, Transport and Technology)

Within the context of VITAL CITIES, Bamberg was selected as a pilot project in order to investigate what possibilities there are in order to strengthen town centre retail trade structures. To this end a number of case studies were conducted locally and analyzed in detail. The “Fitness Program for Bamberg” was initiated by the Bavarian State Ministry for Economics, Infrastructure, Transport and Technology and was conducted by a total of four consultants.

The “Fitness Program for Bamberg Town Centre” was conducted between November 2004 and June 2005. The aim of the project was to involve all participants and to jointly shape an agreed framework for action with specific projects. The objective of the individual projects is to enhance the attractiveness of Bamberg’s town centre.

The term “fitness program” expresses the fact that the improvements to the town centre structures in Bamberg are to be of a permanent nature. The measures are to be coordinated in advance and are to have a lasting effect.

The “Fitness Program for Bamberg” is an example of how town-centre structures can be revitalized through strategic consultation. The starting point of the program was an analysis of the then present situation. With its mediaeval structures, Bamberg is the ideal type of a “European town”. The town is part of the World Cultural Heritage, it is a university town whose centre attracts tourists from all over the world. However, the retail trade development in Bamberg is in the midst of a critical phase. In Bamberg and the neighbouring community Hallstadt there is approximately 152,000 m² of sales space at non-integrated sites, and hence almost three times as much commercial space as in the town centre of Bamberg itself.

During the first phase of the project, stock-taking took place and the retail trade structures in Bamberg underwent an intensive investigation. Within the course of 23 so-called expert meetings, problematic areas, solution strategies and perspectives for the future of Bamberg were discussed. About 40 participants met at the workshop “Trade Fair of Ideas” in order to discuss the development of Bamberg’s town centre. The workshop served to ease the transition from an analysis of the current situation and a broad collection of ideas towards the shaping of strategies. Apart from the substantive aim of the event to define the focal challenge for the town centre and to shape a first response to it, the workshop concept also aims to network and mobilize the participants involved in the implementation of the proposed measures.

After the expert interviews and the “Trade Fair of Ideas”, the analysis of the then present situation was conducted by a team of consultants. A framework for action was defined and supplemented by external experience. A total of five areas within the framework were identified, on which individual expert round tables were convened, at which the individual areas requiring action were presented and the feasibility and effectiveness of individual proposals assessed. Participants in the expert round tables were in each case 7-10 Bamberg participants whose profession or membership in an interest group qualified them as experts in the relevant area.

The areas requiring action were individually tailored to the needs of the town centre of Bamberg:

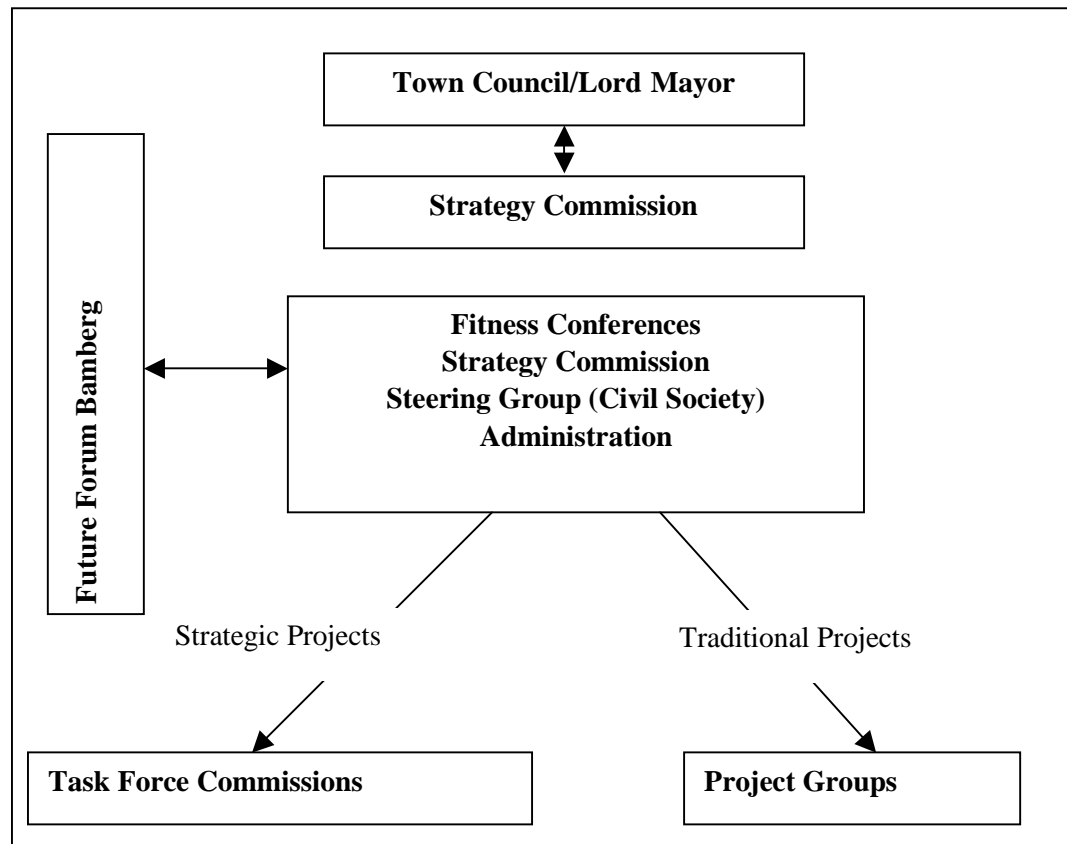
1. Alliance of Bamberg’s town centres (defining the borders of the town centre of Bamberg and existence of several town centres with different target groups)
2. Shopping streets undergoing transformation (possibilities for shopping streets undergoing a drastic transformation in use and/or a loss of quality – strengthening of retail trade or new concepts for use?)
3. World Cultural Heritage: Obligation and opportunity (challenge of making use of the distinctive feature World Cultural Heritage in order to revitalize the town centre; significance of day-to-day and high culture, significance of the university for the town centre)

4. Vibrant town centre and mobility: A contradiction? (How much traffic can the town centre bear? Recommendations for action as regards the accessibility of the town centre)
5. Integrated strategic development and management (networking, strategic direction and overarching perspective; objective: improved bundling of individual measures, improved coordination)

The “Fitness Program for Bamberg” yielded a considerable volume of knowledge in different areas for the VITAL CITIES concept. This applies firstly to the approach adopted, namely how a strategic program for the development of the town centre was developed in Bamberg. It was possible, for example, to find a transition between taking stock and the project phase by initiating the workshops. This approach could also be of interest to other town and city centres.

The “Fitness Program for Bamberg” also demonstrated the importance of implementing the results obtained during the project phase. Guiding models provide orientation during this phase. The fitness program also showed the importance of networking the participants within the community for the success of the project. The experts took the view that in many cases deficits in communication play a major role when town centres fail to realize their potential. In order to overcome such deficits in communication, the Fitness Program organized and institutionalized networks within the town. The aim was to bring together politicians and citizens, politicians and administrators as well as administrative resources within platforms, by means of a steering and monitoring system. This took place firstly in the form of a specific strategy commission within the town council, and secondly through so-called task forces for specific focal issues. The nine platforms provide advice and prepare the ground for decisions to be taken. The mixed composition of the networks means that all interest groups are able to contribute their ideas and goals into the network.

The following diagram shows how the network within the town is organized:



representatives of business and industry as well as initiatives and associations.

5. **On Site Initiative II: Two Pilot Projects in Budapest (Studio Metropolitana)**

Studio Metropolitana is an urban research centre founded as a non-profit organization in Budapest in 1995. The aim of the centre is to research the social, economic and ecological processes in the region and to establish an international and national research network. This is to enable research results to be compiled which can be crucial for both the city of Budapest and all other major Hungarian cities. For example, urban planning projects with international participation are to be coordinated in a comparative manner and the information thus obtained is to be made available to the general public.

Studio Metropolitana is currently involved in two pilot projects in Budapest, the aim of which is to show how city-centre structures can be strengthened. The first project is the development of the Inner Ferencvaros, a typical urban area in Budapest. The other pilot project is a residential district in the third district of Budapest (Bekasmegyer). In both pilot projects Studio Metropolitana conducted surveys on the consumer behaviour of the citizens in the districts and consumers from other districts. The surveys showed that a large number of consumers shopped in small retail shops in the direct vicinity of their place of abode. Most of the customers made purchases in these small shops almost every day. The reason for the attractiveness of these small shops was apparently that shopping in the immediate vicinity has the advantage not only of being able to shop without a car, but the small shops also form part of the social structure within the residential districts. Another result of the survey was that the local market halls continue to be very important for shopping behaviour. On the other hand, hypermarkets are gaining in significance in Budapest for larger shopping trips. A larger shop is made in these hypermarkets about once a week.

One concrete result of the surveys made so far was the decision to refurbish the local market halls in one of the pilot project areas, namely the district of Bekasmegyer. The halls are currently in a very poor condition. The survey conducted by Studio Metropolitana prompted the decision-makers in that district to take the refurbishing into hand. The aim is not only to expand the market halls, but also to renovate the entire district.

Apart from the two pilot projects, surveys on the business improvement district (BID) and the possibilities of implementing it in Hungary form the second focus of the work so far. Within the context of a research commission, the law firm NÖRR STIEFENHOFER LUTZ examined the legal requirements governing the establishment of a business improvement district in Hungary. Business improvement districts are organizations of retail trade businesses, real estate proprietors and other enterprises within a defined area who have the common goal of jointly administrating the defined area. The measures are financed by the BID participants. The particularity is that membership in the BID is mandatory. The legal opinion describes the advantages of the business improvement district and the necessary legal framework for realization of the ideas in Hungary.

During the last two years Studio Metropolitana held several local retail trade forums with the aim of initiating a discussion on the objectives of VITAL CITIES within the two pilot projects. During the discussions support was to be given to local retail traders and an exchange of views was to be initiated as to how retail trade structures could be improved within the pilot projects.

Studio Metropolitana presented the results of the research at numerous events within the context of VITAL CITIES. Studio Metropolitana representatives participated in all international events of VITAL CITIES. These included the retail trade forums in Berlin (Germany), Brescia (Italy), Vienna (Austria), Danzig (Poland), Potsdam (Germany), Milan (Italy) and Prague (Czech Republic).

Studio Metropolitana is presently drawing up local retail trade strategies for both pilot projects. In particular, the proposed initiatives will include a better cooperation among retail traders. According to the viewpoint of Studio Metropolitana, there is a considerable need for cooperation among the retail traders. Apart from this the introduction of business improvement districts (BID) and the corresponding adjustments to the legal framework conditions in Germany are to be discussed. The aim is to compile the experience and results of the pilot projects within one report so as to make the experience of VITAL CITIES available to a broader public. The results will most likely be published in the summer of 2006.

6. On Site Initiative III: Re-Use of empty Retail Capacity in Centre of Frankfurt an der Oder (IGIS – Frankfurt/Oder)

The interest group Innenstadt e.V. (IGIS) in Frankfurt an der Oder developed an instrument within the context of VITAL CITIES which can contribute towards the revitalization of inner city areas. This concerns the re-use of empty retail capacities and serves to identify available retail capacities within the city centre.

IGIS Frankfurt an der Oder is an initiative to enhance the attractiveness of the city. The idea of setting up the internet-based management of empty retail capacity aims to combine the capacities of all landlords in inner city areas and to jointly address the problem of marketing empty business premises. The aim

is to improve the mix of branches, to close gaps in the range of properties on offer and to let empty commercial space.

The project was preceded by the following steps for the development of the city centre:

- Since 1990: extensive renovation measures by real estate proprietors and the city of Frankfurt an der Oder in order to enhance the attractiveness of the site and to improve the conditions for retail trade businesses. Creation of additional space for the revitalization of public spaces, for example, the historic marketplace, and to establish links between retail trade sites within the core inner city area.
- 2001: joint preparation of the “catalogue of measures city centre Frankfurt an der Oder” by IGIS e.V. Frankfurt an der Oder and the city marketing department of the urban administration Frankfurt an der Oder.
- Since 2002: joint implementation of the individual measures set out in the catalogue of measures (e.g. preparation of a shopping and events guide for Frankfurt an der Oder).
- 2001/2002: first joint working meetings of the strategy group of landlords with the support of the municipal department for business promotion and renovation, Frankfurt an der Oder, the international chamber of commerce, HBB e.V. and IGIS e.V., Frankfurt an der Oder.
- 2002: preparation of an analysis of retail trade forming the basis for suitable future product range structures for the city centre of Frankfurt an der Oder by BBE Unternehmensberatung GmbH.

The idea of cooperative marketing of the retail trade site city centre Frankfurt an der Oder aims to create links between real estate proprietors on the one hand and potential tenants on the other hand. The data on unused capacity placed on the internet functions as the link, providing an overview of the inner city of Frankfurt an der Oder and available space. The aim is to thus identify the capacities available in the inner city areas of Frankfurt an der Oder and to present the city as a unified shopping cultural and leisure city with inherent growth.

The internet-based management of empty capacity was approached as follows:

- Creation of a joint umbrella trademark “city centre Frankfurt/Oder” in the form of a logo competition
- Collection of data on empty capacity including the information relevant to letting, with the involvement of the major real estate proprietors
- Research and summary presentation of site factors and the relevant figures regarding the settlement of retail trade enterprises
- Summary presentation of settlement recommendations on the basis of the existing analysis and concepts (retail trade concept, urban planning concept, concept for action “previous old town” etc. and also customer consumer questionnaires)
- Creation of an internet site for the town centre Frankfurt an der Oder with a commercial real estate exchange (www.gewerbe-mittendrin.de) on the basis of the information, figures and settlement recommendations compiled
- Ensuring that the commercial real estate exchange is up to date by providing real estate proprietors with access
- Linking the internet site to the main internet sites of the city.

The management of unused retail capacity has an exemplary function for the VITAL CITIES project: it shows how real estate proprietors can become involved in revitalizing inner city areas. The management of unused retail capacity creates a link between house owners and traders. A platform is created on the internet which brings together proprietors and traders.

Within the course of the project, however, problems arose which should be taken into account when the concept is transposed to other cities. Firstly, not all real estate proprietors are interested in cooperating. Several landlords specialize in letting real estate themselves and perceived the management of unused retail capacity project as an attack on their area of business. Furthermore, there are reservations against a joint umbrella trademark since there are fears that a joint presentation will eclipse the individual participants.

The management of unused capacity can be found at the internet site www.gewerbe-mittendrin.de.

7. Particularities of the Border Region – DSSW Opinion

DSSW, the German Institute for Town Centre Development, prepared a study within the context of VITAL CITIES which took a closer look at retail trade settlements in border regions. DSSW is a non-profit organization founded in 1993 by the German government and German industry. The primary object of the DSSW is to accompany the revitalization of East German inner city areas. DSSW works under the roof of the Deutscher Verband für Wohnungswesen, Städtebau und Raumordnung, the German association for housing, urban planning and spatial planning, which brings together institutions and personalities from politics, industry, administration, the judiciary and research who are in responsible positions in the areas of spatial planning and housing.

Within the context of VITAL CITIES, DSSW prepared a study on retail trade settlements in German-Czech and German-Polish border regions, together with Sabine Slapa (of the architect's office Contextplan, Berlin). The background to the study was the phenomenon that large scale retail trade projects require additional coordination especially in border regions. Large-scale retail trade projects aim their sphere of influence far beyond national borders and therefore require intensive coordination. This presents new challenges to national steering systems: A new retail trade structure has arisen especially on the borders to Central and European countries due to the accession of these countries to the European Union. The significance of borders decreases and shopping behaviour undergoes changes. The DSSW study investigates the border regions Germany-Poland and Germany-Czech Republic, and hence two border regions in which retail trade structures underwent changes in recent years and in which one may expect that the settlement of large-scale retail trade projects will continue to progress.

The DSSW study is based firstly on expert interviews. A total of 600 questionnaires were sent to institutions, municipalities, regional initiatives, cooperations and industry representatives. In addition, numerous telephone interviews were conducted in which questions were posed to decision-makers on the status of cross-border cooperation. A total of three so-called workshop meetings also took place in which discussions arose on the development of

retail trade in the border regions, moderated by the architect's office Contextplan. The three workshop meetings in Torgelow, Görlitz and Annaberg-Buchholz brought the decision-makers together on site with the aim of contributing to an exchange of views in the region.

The results of the study show that borders continue to be of considerable significance for the coordination of sites for retail trade projects. It became clear that a considerable need for coordination has to be expected especially in border regions for the aims of the VITAL CITIES project. The study describes existing cooperation projects within the border regions. These range from Euro regions via government commissions at the national or federal state level, down to informal local organizations. The picture drawn of the cooperation in border regions in the study makes it clear that a continued considerable need for coordination in cooperation matters has to be expected. Whilst in several regions there has been good progress in cooperation and a pragmatic approach is taken, it is possible to observe in other regions that the cooperation partners are not familiar with their contacts on the other side of the border. The legal principles of cooperation and/or of spatial planning are not available in a sufficiently transparent form in several border regions. Whereas a spatial planning commission in the border region Germany/Poland is starting to create the necessary transparency, one has to note that in the Czech/German border region there is no such coordinating office at the national level.

The results of the DSSW study are correspondingly heterogeneous: It emerged from the three workshop meetings that pragmatic cooperation on site is still at the initial stages in many border regions. Language barriers and a lack of transparency as regards the legal principles prevent any cooperation in many areas. The self-understanding of the DSSW project is that of an initiator, triggering a discussion within the border region. The results of the projects have been summarized in a report provided to DSSW.

8. Retail Trade Structures in Romania: Research by URBANPROIECT (Bucharest)

URBANPROIECT is a Romanian institute engaged in the area of urban planning. Within the context of VITAL CITIES, URBANPROIECT prepared a study on the possibilities of steering retail trade in Romania.

The result of the study is an overview of the influence of retail trade on urban development. URBANPROIECT prepared a report containing information on retail trade in Romania, and constituting the basis for formulating regulations on future urban development. URBANPROIECT also prepared a case study on one of the arterial roads of Bucharest, also within the context of VITAL CITIES. The arterial road is the Calea Mosilor. The aim of the case study is to demonstrate how retail trade can be settled on an arterial road. Within the context of the case study on the arterial road Calea Mosilor, URBANPROIECT first analysed the urban and planning structure. In particular, the main participants in urban development were identified. Stock-taking also took place regarding existing shopping structures. Based on this analysis, proposals were then made as to how to improve the retail trade structure on the shopping road Calea Mosilor. Another chapter in this study, devoted to economical politics at the level of the local administration, describes the legal requirements of urban planning and tax regulation in Bucharest. The existing institutions and all organizations are also listed. The presentation of legal provisions ranges from the urban development plan of the city of Bucharest via the zonal plan to the local provisions on the Calea Mosilor arterial road. Within the chapter on the financial framework conditions, the main provisions in the area of tax law, property law and transfer of ownership are presented. Possibilities to obtain aid for the commercial development of the district are also included in the study. The final chapter on the institutional framework conditions identifies existing interest groups which promote the development of commerce and trade at the national, regional and local levels.

The chapter on urban development motives takes a look at potential investors who may establish businesses in the shopping street. In this connection the development potential of the commercial structure of the arterial road Calea Mosilor is also described. The study ends with a recommendation for measures and strategies for taking action which could lead to the settlement of retail trade businesses. In this respect guidelines are presented for taking action to improve the quality of the site and with regard to the legal and institutional framework conditions.

The results of the project can be obtained from URBANPROIECT.

9. Retail Trade in Mountain Regions – the Lombardy Region

A particular focus of VITAL CITIES lies on retail trade structures in mountain regions or in regions that are geographically difficult to access. The revitalization of town centres presents a particular challenge in these regions. Within the context of VITAL CITIES the Lombardy region is an example of the particular problems arising in mountain regions.

The Lombardy region took it upon itself within the context of VITAL CITIES to develop innovative instruments for trade in mountain regions. To this end data was collected on the size and quality of retail trade structures and surveys were conducted on consumer behaviour in the region. The data is computer-updated and computer-steered.

10. Surveys on Retail Trade Structures in Central and Eastern European Cities: Poznan, Pecs and Timisoara (Prof. Wenzel)

Within the context of VITAL CITIES, Prof. Dr. Klaus Wenzel conducted surveys on the retail trade structures in three cities of Central/Eastern Europe, namely the cities of Pecs (Hungary), Timisoara (Romania) and Poznan (Poland). Research was undertaken not only into the retail trade structure in the cities themselves, it also included the broader catchment area of these cities, especially the regional level.

The three cities are each of central significance in their respective regions. The city of Poznan is located within the Wojwodschaft Wielkopolskie, the city itself has 570,000 citizens the Wojwodschaft itself 3.4 million citizens. The city of Pecs has 160,000 citizens, the region (Komitat) Baranya 420,000. The Romanian city of Timisoara with a population of 330,000 is the largest city in the region of Jodetbanat which has a population of 560,000 citizens.

In a first step the opinion empirically lists the trade structures in the three regions surveyed and forecasts the turnover figures up to the year 2010. In all three regions the development of new forms of sales can be observed from the mid-1990s onwards. Western enterprises in particular open large-scale enterprises, mostly in greenfield locations.

The retail trade development in the three cities investigated shows that so far there is a fundamental lack of strategic planning in Central and Eastern European countries. Retail trade projects are the focus of planning in isolation. The polycentric development of the region is thus not ensured and the conclusion drawn in the study is that retail trade concepts in particular are required for urban development in these countries. The opinion shows what such a retail trade concept for the relevant cities could look like and in this respect refers to the examples of similar cities (Dresden).

The opinion extends beyond stocktaking and also contains proposals on future retail trade developments in the three cities. To this end the opinion presents the areas to be developed in coming years and also presents potential retail trade sites within the city centres. The conclusion drawn in the opinion is that modernization of retail trade structures in Central and East European countries is consistent with the strengthening of inner cities. The example of Pecs in particular shows how modern forms of shopping can be integrated into inner cities, thus ensuring polycentric spatial development.

III. European Requirements Regarding the Settlement of Retail Trade Projects

The following chapter discusses the supra-national requirements governing the settlement of retail trade projects. It is first discussed which policy the European Commission has pursued so far on the issue of the revitalization of inner cities, and secondly the planning structures which impact retail trade projects are presented.

1. Strategy of the European Commission in the Area of “Commerce”

The European Commission undertook intensive research into retail trade during the 1990s. In 1991 the Commission published the communication “Towards a Single Market in Distribution”, which was followed by the Green Paper on commerce adopted in November 1996. The aim of the Green Paper was to provide ideas and to bring about a consultation procedure on the significance of the business sector of commerce. The Green Paper on commerce was subsequently subject to intense discussion, in which respect the competitiveness of commerce was the main issue of the consultations.²² In 1999 the Commission then went public with a White Paper on Commerce, in which it presented proposals as to how political measures at the regional, national and European levels could contribute to optimizing the performance capacity in sector.

Among the proposals of the Commission contained in the White Paper on Commerce there are no statements on the question of the extent to which the changes in the retail trade structures just discussed jeopardize the inherent growth of town and city centres in Europe.²³ The changes in trade are researched in the White Paper predominantly under the aspect of competitiveness, whereas the impact on the settlement structure is not taken into account.

The silence of the European Commission in the White Paper on Commerce cannot be explained by a lack of interest in the issues of the settlement of retail trade projects in Europe. In a comprehensive report on planning systems in Europe, the EU Commission had in 1997 devoted an entire chapter to the

²² European Commission, White Paper on Commerce, COM (1999) 6 final, at 2.

²³ Contrary to the discussion in the Green Paper on commerce dating from 1996: Blatt/Raczeck, *Wirtschaftsstandort Innenstadt und „Grüne Wiese“*, 2nd ed., 1998, at 228.

existing possibilities of steering retail trade projects.²⁴ Rather, the Commission's silence can be explained by its lack of competence to set standards in the area of spatial development. The European Community does not have genuine competence for spatial planning according to the EC Treaty.²⁵ Legislative competence of the EU in the area of "territorial cohesion" could arise under Art. III.-221 (3) of the EU Constitution from the nature of furthering regulation,²⁶ however, the Constitution has not entered into force in the face of the referendums in the Netherlands and France. This means that the entities of the EU – according to today's prevailing opinion – cannot undertake spatial planning based on their own competence under the EU Treaty.²⁷ It is for this reason that the White Paper of the EU Commission does not contain any statements as to how the settlement of retail trade enterprises is to be handled.

2. Assessment of Environmental Compatibility (SEA and EIA Directives)

It should therefore be noted that under the aspect of "spatial development" no direct requirements arise regarding the settlement of retail trade enterprises, however, this does not apply to the environmental sector. Under Art. 175 (1) and (2), EU Treaty, the competence to regulate in this area arises, and Art. 175 (2) of the Treaty in particular enables environmental protection measures to be adopted which affect spatial planning.²⁸

²⁴ European Commission (Ed.), the EU compendium of spatial planning systems and policies, 1997, at 115-121.

²⁵ On European spatial planning in particular: Wahl, *Europäisches Planungsrecht – Europäisierung des Deutschen Planungsrechts*, in: Grupp et al (Eds.), *Planung-Recht-Rechtsschutz Festschrift für Willi Blümel zum 70. Geburtstag am 6. Januar 1999*, 1998, at 617 – 646, idem, *Einige Grundprobleme im europäischen Raumplanungsrecht*, in: Erbguth et al (Eds.), *Planung*, München, 2000, at 913 et seq.; Gatawis, *Steuerung der nationalen Raumordnung durch das ESDP und durch Fördermittel der EG*, in: *UPR 2002*, at 263 et seq.; Ritter, *Europäische Planungsverfahren*, in: *Akademie für Raumplanung und Landesplanung (Ed.), Handwörterbuch der Raumplanung (2005)*, at 241-246.

²⁶ See in detail Battis/Schmitz, *Ausgestaltung der Raumentwicklung in der Europäischen Verfassung – Expertise zur Position der EU-Mitgliedstaaten zur künftigen Aufgabenverteilung zwischen der Europäischen Union und der Mitgliedstaaten im Bereich der Raumentwicklung*, erstellt im Auftrage des Bundesamtes für Bauen und Raumordnung, March 2005, at 29 et seq..

²⁷ Bibliographical references in: Gatawis, *Legislative Kompetenzen der Europäischen Gemeinschaft im Bereich der Raumordnung*, in: *DÖV 2002*, at 858 et seq.

²⁸ On the disputed question of the extent to which Art. 175, EC Treaty, is a competence provision in the area of spatial planning, see in particular: Gatawis, *Legislative Kompetenzen der Europäischen Gemeinschaft*, in: *DÖV 2002*, at 858-864; critically especially: Krautzberger/Selke, *Auf dem Weg zu einem Europäischen Raumentwicklungskonzept*, in: *DÖV 1994*, at 685-686.

On the basis of this competence the so-called EIA Directive (Environmental Impact Assessment Directive No. 85/337/EC) and the SEA Directive (Directive on Strategic Environmental Assessment, No. 2001/42/EC) were adopted. Article 4 of the EIA Directive makes a distinction as regards the necessity of assessing environmental compatibility. An assessment of environmental compatibility always has to be conducted for projects listed in Annex I. For projects listed in Annex II, the Member States decide themselves, subject to Art. 2 (3), on the basis of examination of an individual case or of threshold values determined by the Member States, whether the project requires an assessment of environmental compatibility. In this respect the Member States may choose between the examination of an individual case and threshold values set. According to Art. 4 (3), in case of the examination of an individual case or of threshold values or criteria pursuant to para. 2 of the Directive, the relevant selection criteria of Annex III have to be observed.

According to 10.B, shopping centres fall within the category of projects regulated in Annex II. According to the EIA Directive, such projects are not always subject to an assessment of environmental compatibility, but only within the context of the criteria set out in Art. 4 (2) of the Directive.

The definition of the necessity to assess environmental compatibility in the SEA Directive is different. The decisive provision is Art. 3 of Directive 2001/42/EC, according to which all plans and programs developed in the areas of agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use have to undergo an environmental assessment and which provide the framework for future permits for the projects listed in Annexes I and II of Directive 85/337/EC. Excepted from this pursuant to Art. 3 (3) of the SEA Directive are solely the following plans and programs: plans and programs which determine the use of small areas of land at the local level, and insignificant modifications of the plans and programs falling within para. 2 only require an environmental assessment if the Member States hold that they will probably have a significant impact on the environment. To this end the Member States establish by way of an analysis of an individual case or by determining types of plans and programs, or through a combination of these two approaches, whether or not the plans and programs mentioned in paragraphs 2 and 4 are likely to have a significant impact on the environment. To this end the Member States definitely take into account the relevant criteria

of Annex II so as to ensure that plans and programs which most likely will have a significant impact on the environment are covered by the Directive.

The scope of application of the two Directives with regard to shopping centres therefore varies. Whereas under the EIA Directive the projects listed in Annex II will not always be subject to an assessment of environmental compatibility, according to Art. 3 (2) of the SEA Directive, plans and programs of projects listed in Annex II will as a rule require an assessment of environmental compatibility.

Since shopping centres are mentioned in Annex II, according to the EIA Directive, they are subject to an assessment of environmental compatibility if the Member States are convinced that the project will have an impact on the environment. If, in contrast, plans and programs are developed which form a framework for the projects mentioned in Annexes I and II, as a rule a strategic assessment of environmental impact will have to be conducted. Consequently, the obligation to conduct an assessment of environmental compatibility within the context of the strategic environmental assessment is stricter than the same obligation within the ambit of the EIA Directive.

3. European Spatial Development Perspective (ESDP)

Under European law there are no further requirements governing the settlement of retail trade projects. However, the European Spatial Development Perspective (ESDP) adopted in 1999 in non-binding form does contain statements on how large-scale retail projects are to be settled.²⁹ ESDP is a spatial development program adopted by the ministers of the Member States responsible for that sector, and is not legally binding. It is therefore not an EU or EC act. Nevertheless, the ESDP does document the intent of both the relevant ministers and of the Member States to pursue spatial development at the European level.

The ESDP does not contain direct requirements on the settlement of retail trade enterprises. However, ESDP does influence spatial development via the

²⁹ Krautzberger, Zur Europäisierung des Städtebaurechts, in: DVBl. 120 (2005), at 197-202; Gatawis, Steuerung der nationalen Raumordnung durch das ESDP und durch Fördermittel der EG, in: UPR 2002, at 263 et seq.; Ritter, Europäische Planungsverfahren, in: Akademie für Raumplanung und Landesplanung (Ed.), Handwörterbuch der Raumplanung (2005), at 241-246; Noetzel/Schmitz (Ed.), Europäisches Raumentwicklungskonzept, 2000.

requirement that spatial development be well-balanced. Consequently, well-balanced regional spatial development has to be oriented to a polycentric development scheme. The ESDP provides for a decentralized settlement structure with towns and cities being ranked. In the sense of sustainable urban development, the ESDP stresses that there has to be control over the expansion of towns and cities. To this end all Member States are to orient their efforts to the concept of the “compact city”. Part of this project is the minimization of the expansion of settlement areas within the context of well-planned site and settlement policies.³⁰

This means that retail trade enterprises have to be settled in a manner compatible with the region according to the ESDP principles. However, the ESDP provisions are of such an abstract and non-binding nature that they are unable to unfold any direct steering effect.

IV. Legal Steering Instruments in the Countries of the Project

The settlement of large-scale retail trade projects at non-integrated sites is a European phenomenon, in which respect the dissemination of new forms of shopping arose first in West European countries and after 1990 in the Central and East European states. One object of the VITAL CITIES project is to provide a description of the planning structures in the VITAL CITIES countries. Whereas there are a number of surveys for the West European states, dating especially from the 1990s, presenting comparative research into the planning systems of those countries,³¹ so far there is no presentation of the planning systems in Central and East European countries. The legal opinions drawn up in the VITAL CITIES context now constitute a foundation for the illustration of these planning systems. In the opinions the planning instruments are explained and, insofar as they exist, steering instruments for large-scale retail trade are described. The results are summarized in the following overview. A more detailed presentation of the planning systems can be found in the national legal opinions prepared within the context of VITAL CITIES and, secondly, in a comparative legal study.³²

³⁰ European Commission (Ed.), ESDP European Spatial Development Perspective, 1999, at 23.

³¹ van den Berg/Braun/van der Meer: National Urban Policies in the European Union, 1998; Newman/Thornley, Urban Planning in Europe, 1996; Kushner, Comparative Urban Planning Law, 2003; Salet/Thornley/Kreukels, Metropolitan governance and spatial planning, 2003.

³² NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in der Bundesrepublik Deutschland, 2005; NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the

1. Czech Republic

The primary legal basis for steering retail trade projects in the Czech Republic is the Law on Spatial Planning and Building Code dating from 1976 (Building Law). This Building Law (*stavebního zákona*) regulates which planning instruments are available and who is entitled to undertake such planning. The Law is currently undergoing a revision, a new law is to enter into force in 2007.

The Building Law does not contain specific provisions on large-scale retail trade projects. Rather, the term “social buildings” is used in the Law, which encompasses a very large number of very diverse institutions including retail trade projects as well as cultural or social establishments.

The Czech Building Law provides that “social buildings” have to be shown on the land development plan [*Flächennutzungsplan*] of the municipality. The land development plan (*Plán využití ploch*) is at the second level of binding planning instruments. The most abstract binding spatial planning instrument is the regional spatial plan (*Územní plán*). This plan is prepared for the territory of several municipalities and is adopted by the region. This spatial plan contains no restrictions on the planning competence of the municipality as regards retail trade projects so that within the land development plan the municipality is able to determine „social buildings“ within its own planning competence. The municipalities are therefore not limited in their planning competence as regards the settlement of retail trade projects. They are in a position to settle retail trade projects within the land development plan

EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in Österreich*, 2006; NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in Polen*, 2005; NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in der Tschechischen Republik*, 2005; NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in Ungarn*, 2005; NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in Rumänien*, 2005; NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in der Slowakei*, 2005; all legal opinions to be found at: www.vital-cities.net.

according to their own priorities. Under Czech planning law there is no limitation of the municipal planning competence for retail trade projects.³³

This means that the strong position of municipalities under Czech planning law characterizes the settlement of retail trade projects in that country. This concentration of planning competence at the municipal level is a result of the transformation process within the Czech Republic following the changes in the political system after 1990. Until the year 1990 Czech planning law was marked by a strong centralization. Up to that time the central settlement system developed from the 1960s onwards was dominant. Only municipalities identified as being central locations were entitled to maintain social, business and cultural establishments. This centralistic planning system was fundamentally transformed by the political changes of 1990. The economic plan was rejected and central spatial planning discredited. For this reason there was a shift in responsibilities and competence, especially towards the municipal level. It is now here that central planning competences convene and are only restricted slightly by the superior planning hierarchies.

The municipalities occupy a special position especially vis-à-vis the regions. Whereas the self-administration of municipalities in the Czech Republic commenced immediately after the changes in the political system in 1990, it took a relatively long time for a regional level to develop in the Czech Republic. This regional level today consists of 14 regions (*kraje*) established in the Czech Republic in 2000. The regions were already provided for in the Czech Constitution, but were only established as an interim level during the accession negotiations of the Czech Republic to the European Union. Since the regions have not existed for very long, they first have to become accommodated with their function. At the present time there is no effective coordination of the settlement of retail trade projects at the regional level. Nor does this matter fall within the scope of responsibility of the regions.

It should therefore be noted that steering above the municipal level is not provided for under the law as it stands in the Czech Republic. The municipalities are entitled to settle retail trade businesses on the basis of their own planning competence. Owing to the territorial structure of the Czech

³³ NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, *Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in der Tschechischen Republik*, 2005, at 36-64; to be found at: www.vital-cities.net.

Republic, this means that there is inherent competition among the municipalities as regards the settlement of retail trade projects. This competition among municipalities is intensified by the marked territorial division of the municipal administration in the Czech Republic. Approximately 60% of the municipalities in the Czech Republic have a population of less than 5000, and a further 20% a population of between 500 and 1000 persons. About 90% of the Czech municipalities have a population of less than 2000. The number of municipalities in the Czech Republic is over 6000. These structures mean that the extent to which the integrated settlement of retail trade projects will take place depends on the political will of a municipality. There is a certain steering element above the municipal level insofar as under Czech law prominent municipalities may perform the responsibilities for smaller municipalities. These are municipalities of the „third category“ with an extended scope of responsibilities. There are about 200 municipalities in this third category which are entitled to undertake planning for other municipalities beyond their own respective territories, under a corresponding agreement.

Apart from spatial planning law, planning obligations arise from Law on the Assessment of Environmental Compatibility (dating from 2001). According to § 20 of that Law, the Ministry for the Environment and the regions are competent in this respect.

2. Federal Republic of Germany

The main regulation in German planning law is § 11 (3), Regulation on the Use of Buildings [Baunutzungsverordnung – hereinafter: BauNVO]. The Regulation provides that special provisions apply to the settlement of retail trade projects. A distinction is made between shopping centres and large-scale retail trade projects. Whereas shopping centres are governed by special provisions, this applies to large-scale retail trade projects only if they exceed 1200 m² in utilisable space. The special provision in § 11 (3), BauNVO, provides that large-scale retail trade projects may only be settled in a “special area” or a “core area”. This means that municipal planning plays a decisive role in the settlement of retail trade projects.

However, there are limitations on the municipal planning competence at several levels. The first limitation applies to the drawing up of the plan. According to the German Building Code [Baugesetzbuch – hereinafter:

BauGB], the urban development plans of neighbouring municipalities have to be coordinated with one another. This means that the planning of a municipality may not be directed against the neighbouring municipality. The obligation to consult the neighbouring municipality accords particular weight to its interests.

In addition, municipal planning is limited by regulations of the federal states in Germany. In all federal - as opposed to city - states there are requirements under the so-called central-location principle regarding the settlement of retail trade projects.³⁴ Under the central-location principle, a region is divided at the federal state level. A centrality categorization of municipalities is made which can also impact the settlement of retail trade projects: Consequently, only municipalities of a certain centrality rank are entitled to site large-scale retail trade enterprises within their own municipal borders.

The central-location principle contains a formal system which ties large-scale retail trade projects to the size of the relevant municipality. The aim is to control competition among the municipalities for the settlement of retail trade projects. The central-location system has the advantage that the territory can be regulated on the basis of criteria such as the size of the municipality and its function within the region. Hence, instruments are available to prevent areas becoming spoiled by sprawling urban settlements.

Despite the legal instruments available, there are deficits in the steering effect of planning law in Germany. It has emerged in practice, for example, that over-dimensioned large-scale retail trade businesses have been established at non-integrated sites. It has been ascertained that the legal instruments available have not always been wielded consistently. One of the main reasons for this so far was that the inter-municipal coordination requirement anchored in § 2 (2), BauGB, has proved difficult to enforce in court.³⁵ So far the neighbouring municipality was able to assert its legal position only with legal difficulties. Through a revision of the Building Code in 2004, the legislature strengthened

³⁴ Blotevogel, Art. „Zentrale Orte“, in: Ritter, Handwörterbuch der Raumordnung, at 1307-1315; Stiens/Pick, Die Zentrale-Orte-Systeme der Bundesländer, in: Raumforschung und Raumordnung 56 (1998), at 421-434; Blotevogel (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, Akademie für Raumforschung und Landesplanung, 2002.

³⁵ Schmitz/Federwisch, Einzelhandel und Planungsrecht, Schaffung von Baurecht für Einzelhandelsvorhaben unter Berücksichtigung des Europarechtsanpassungsgesetzes (EAG Bau), 2005, at 34.

the position of neighbouring municipalities. One has to await the extent to which this means that future municipal plans will be examined in more detail in future. At the present time it is not possible to provide a reliable estimate of the legal developments.

In addition to § 11 (3), BauNVO, and the requirements under the central-location principle, there are also a number of special provisions applicable to retail trade projects. These provisions include, for example, § 34 (3), BauGB, and the regulations on conducting an examination of environmental compatibility. Both detailed case law and extensive literature exist on these and other issues regarding the settlement of retail trade. For this reason, reference is made to the opinion on the relevant legal framework conditions in the Federal Republic of Germany.³⁶

3. Poland

Polish planning law is based for the most part on the Law of 27 March 2003 on Spatial Planning (Ustawa z dnia 27 marca 2003 r. o planowaniu i zagospodarowaniu przestrzennym) and the Law of 7 July 1994, the Building Law (Ustawa z dnia 7 lipca 1994 r. Prawo budowlane). The two laws do not contain any special provisions on retail trade projects.

In Polish planning law a distinction is made between three planning levels, the national planning level, the regional planning level of the Woiwodschaft and the municipal planning level. The decisive planning competence for the settlement of retail trade projects under Polish spatial planning law lies at the municipal planning level. No limitation of the municipal planning competence for the settlement of retail trade projects is provided for at the national level or at the regional level of the Woiwodschaft.

Consequently, it is the responsibility of the municipality of the site to steer the settlement of retail trade projects. There are special legal provisions under Polish planning law insofar as retail trade projects with over 2,000m² of sales space have to be shown separately on the municipal development plan pursuant to Art. 15 (3), Law on Spatial Planning (RPROG). This means that such

³⁶ NÖRR STIEFENHOFER LUTZ, legal opinion prepared within the context of the EU project VITAL CITIES, Rechtliche Rahmenbedingungen der Einzelhandelsansiedlung in der Bundesrepublik Deutschland, 2005, to be found at: www.vital-cities.eu.

projects are governed by the provisions on the enactment of urban development plans. Consequently, the impact of the project has to be examined when the development plan is drawn up. During such an examination, as a rule it is necessary to examine the environmental compatibility of the project. This arises from a regulation of the council of ministers of 9 November 2004, which specifies criteria as to when trade and service centres have to undergo an examination of environmental compatibility.

If the retail trade project has a sales area of less than 2000 m², it can be permitted without a municipal development plan being enacted. In this case a so-called preliminary notification will suffice, which constitutes the basis for the grant of the building permit since binding effect arises in this respect under Art. 55 of the Law on Spatial Planning. The conditions under which the project is permitted are determined in this case by way of a decision. As a matter of principle, the mayor of the municipality is responsible for defining the relevant terms.

Consequently, in the special provisions of Polish planning law a distinction is made solely according to the planning instruments required for permission to realize retail trade projects.

If the size of a retail trade establishment exceeds 2000 m², a municipal development plan is required by law. Smaller retail trade projects can be permitted without formal planning. There are no perceivable restrictions on the planning competence of municipalities under Polish law, either at the regional level or at the national level. There are general references to the interests which have to be considered when drawing up the plan, however, there are no further requirements or limitations under Polish law.

During the last parliamentary term consultations took place in Poland on legislation on large-scale commercial objects (Sejmblatt No. 3281). It is planned that the law will involve the regional level (Woiwodschaft) in the permit procedure for retail trade projects. This is to take place in that the Woiwodschaftsmarschall and the Woiwod have to jointly apply for permission for a large-scale retail trade project, and that the permission is granted by the mayor of the municipality. There are also plans in the draft legislation to re-establish the central-location principle in Poland and to permit large-scale retail trade projects only in proportion to the size of the site municipality. The

planning competence is to be restricted by further criteria: It is planned to tie a permit to the per capita GNP and to include a percentage cap on the volume of the project in proportion to existing retail trade (15%). Further legislative plans (Sejmblatt No. 3661) intend to limit the space utilization made available for retail trade projects. According to these plans, the municipal development plan is to establish borders for the establishment of commercial objects with an utilizable area of over 5000 m². This means that retail trade projects of these dimensions would only be permissible within certain defined areas. The legislative plans encountered considerable resistance during the consultations. It is therefore not possible to forecast the extent to which limitations will be placed on the planning competence of municipalities in Poland in future.

Consequently, the planning system in Poland is presently very definitely tailored to the municipal level. This means that self-administration of municipalities as guaranteed under the Polish Constitution is the guiding principle of planning competence. Self-administration of municipalities is one of the fundamental changes which now characterize the administrative system in Poland following the changes in the political system after 1990. The fact that self-administration of municipalities is not restricted with regard to the settlement of retail trade projects is, therefore, a result of the decentralization of planning competence and hence from the political perspective a consequence of the transformation process.

4. Hungary

Hungarian planning law is characterized by the three-tier administrative structure in the Hungarian Republic. Next to the national administration, there is an administration through the regions (Komitate) and urban self-administration. There is a peculiarity in Hungary in that certain Cities have regional rights and perform not only urban but also regional responsibilities within their territories. Spatial planning institutions can be found at the national, regional and municipal levels. The ministry for agriculture and regional planning and the national development council are the competent institutions at the national level. At the regional level the regional self-administration and a regional development council have been instituted. At the municipal level, the municipal council is the competent institution.

This three-tier administrative structure is a result of the transformation process which took place after 1990. The municipal level was strengthened, the consequence being that the Hungarian administration is now characterized by marked decentralization and fragmentation. There are presently over 3000 urban and village municipalities in Hungary. More than 35% of the municipalities in Hungary have a population of less than 500.

There are spatial planning instruments at both the regional and the municipal levels. At the regional level a spatial development plan is adopted which defines the regional framework and the technical infrastructure of the relevant area, and which contains fundamental statements on the long-term regional structure. This spatial development plan does not, however, include the municipalities with special authority to perform regional responsibilities. The spatial development plans do not contain specific statements on retail trade projects.

At the level below the spatial development plans there are the so-called settlement structure plans which are enacted by the municipalities. The settlement structure plans include a settlement structure plan and a land development plan. The settlement structure plan is drawn up for the entire territory of a municipality and determines the manner in which individual areas of the settlement may be used. The settlement structure plan thus determines the spatial development within the territory of the municipality.

However, a settlement structure plan is only binding internally, no exterior legal effects are established by that plan. This function is assumed by the municipal land development plan which has to be consistent with the settlement structure plan and which determines in binding form building utilization of the planned space.

For this reason, the material information on the admissibility of retail trade projects is contained in the land development plan. A government regulation for specification of possible uses was enacted in 1997, which determines the specific national requirements regarding building projects and the settlement structure (OTÉK Regulation). According to the Regulation, the following building areas may be specified: residential areas, mixed areas, business and commerce areas, recreation areas and special areas.

Hungarian planning law contains no specific provisions on large-scale retail trade projects. This means that the municipalities are able to steer retail trade projects within the context of settlement structure planning (settlement structure plan and land development plan). No material limitation of the planning competence of municipalities is provided for. However, at each planning level there are so-called councils whose responsibility it is to coordinate planning projects which go beyond the borders of a municipality or a region. Retail trade projects are not among the matters requiring such coordination.

The planning structures in Hungary which focus on the municipal level as regards spatial planning are the result of the changes in the political system after 1990. Until 1990 Hungarian spatial planning law was characterized by strict hierarchies. The central-location principle constituted the basis of centralistic spatial planning. This principle was dropped in the course of the transformation. The strong status of the municipalities as guaranteed by the Constitution now characterizes spatial planning. Self-administration of municipalities is anchored in Art. 42 of the Hungarian Constitution and is understood to be an expression of the democratic revitalization of Hungary. Article 43 of the Hungarian Constitution grants the status of fundamental rights to the rights of municipalities. At the present time there are apparently no plans to modify this strong status of the municipalities within the planning system.

The Act on Spatial Development offers possibilities to steer retail trade projects above the level of individual municipalities. According to the Act, several municipalities may establish a communal development association and thus pursue the planning beyond the borders of their individual municipalities.

5. Romania

In recent years a number of regulations and statutes have been enacted in Romania in order to achieve effective steering of retail trade structures. In a European comparison, the legal situation in Romania is marked by strict permits granted for retail trade projects; various steering instruments are available, ranging from planning law through the institutional monitoring of the development of retail trade by a commission.

Fundamental requirements are set out in the general urban planning Regulation (Regulamentul general de urbanism). The general requirements of the Regulation on urban development stipulate that the erection of buildings or any kind whatsoever are as a matter of principle permitted only on real property located within the inner area of a town or village. Land lying outside a town or village may only be built on in certain expressly defined exceptional cases according to the Act. If the project is realized within a town or village, there has to be integrated settlement. There are also a number of special provisions on retail trade projects: for example, shopping centres and supermarkets may not be built in the vicinity of airports or near industrial areas. Maximum use of the parcel of land through a retail trade building is not to exceed 85%. Other provisions in the general urban planning Regulation concern especially the requirement of creating a certain minimum number of parking spaces.

Outside the urban planning Regulation, there are a number of requirements under government regulations with the aim of steering the settlement of retail trade projects. For example, municipalities are authorized to specify areas in which retail trade businesses with average and substantial space are permitted, and the municipalities are to determine the manner in which neighbouring areas to such businesses are to be used. The aim of this is to ensure that retail trade projects are integrated into the established landscape of a town or city.

In 2004 the provisions on the settlement of retail trade projects were tightened up. It was determined through a government resolution relating to large-scale retail trade settlements that the opinion of a commission with a mixed composition is required for the erection, conversion or expansion of a retail trade project. This commission (Comisia socio-economică de examinare și avizare a implantării structurilor de vânzare cu amănuntul) is composed of representatives of the municipal administration and of private industry. Also included are representatives of the district and city councils, of the mayor's office, the chamber of industry and commerce, the consumer protection association, employer and employee associations as well as neighbouring enterprises. The commission is in a position to organize itself by way of Articles and hence to define its responsibilities.

The opinion of the commission is integrated into the permit procedure within the building proceedings. A permit procedure cannot be concluded without an opinion having been issued. The opinion requires a study on the market and

impact, in which the commission examines the expected impact of the retail trade project.

The institutionalized anchoring of the interests involved in the permit procedure within the context of the work of the commission is an instrument for monitoring compliance with the requirements of general urban planning provisions. The advantage of the mixed composition of the commission is that knowledge from various areas of municipal and business life can be integrated. At the present time, however, the extent to which such institutionalized anchoring will achieve effective steering cannot be estimated. The government resolution on the institution of a commission entered into force in September 2004, and so far there are no results indicating what the work of the commission will look like.

Consequently, under the Romanian planning system relatively strict limitations are placed on municipal planning competence. According to Art. 19 of the Romanian Constitution, the territorial administrative departments are oriented to the principles of “local autonomy” and “decentralization”; however, in the field of spatial planning the framework for municipalities is relatively constrained due to the general urban planning regulations. Here, in particular, the provision is worth mentioning under which retail trade projects, like other building projects, may only be realized within the territory of a municipality, a town or city. Additional planning obligations arise from implementation of the Environmental Impact Assessment Directive and the Strategic Environmental Assessment Directive of the EU, which have both been integrated into national Romanian law.

6. Slovak Republic

The planning system in the Slovak Republic has a three-tier administration structure. Correspondingly, there are planning instruments at the national, regional and municipal levels. Regional plans are drawn up at the national and regional levels which determine the fundamental structures of the region and, in particular, the direction of future infrastructures. At this national and regional level, no steering instruments are made available for the settlement of retail trade projects.

This means that the municipalities have the authority to regulate the settlement of retail trade projects. There are no plans under present Slovak law to limit the planning competence of the municipalities. Rather, the municipalities are able to permit retail trade projects themselves within their planning territory. There are, however, plans under which the municipalities would have to submit the regional plans to government supervisory authorities prior to adoption. There are no specific control regulations on retail trade projects, however, in individual cases restrictions may arise. For example, under the Law on the Protection of Agricultural Land (Law No. 220/2004) building work and sealing of agricultural land are generally not permitted. It is also planned that adoption of a regional plan requires an opinion issued by the competent environmental authority.

Particular requirements may arise due to the obligation to conduct an examination of environmental compatibility, as required under the Law on Examination of Environmental Compatibility (Law No. 127/1994 collection). Consequently, the municipal plans for municipalities with a population of over 2,000 have to undergo an assessment of environmental compatibility. There are also plans to subject retail trade projects with a sales area of over 5000m² and large-scale retail trade units with a sales area of over 1000 m² or over 100 parking spaces to an assessment within the so-called determination procedure. Within the determination procedure the question as to what extent an assessment of environmental compatibility is required for the project is examined. The Ministry of the Environment is competent to take this decision. At the present time consultations are under way in the Slovak Republic on a revision of the Law on the Examination of Environmental Compatibility. According to the revision, retail trade projects with a utilizable area of over 2000 m² will be assessed within the so-called determination procedure as to their impact on the environment.

This means that the planning system in the Slovak Republic is among those where planning competence of the municipality is very marked. The central-location system applied in the Slovak Republic until 1989. Up to that date 77 first-rank municipalities were identified whose significance within the central-location system was supra-regional. 625 municipalities were defined as being of secondary rank and of local significance. This system of central locations was abandoned after 1989 and the planning system is now based essentially on

the principle of decentralization.³⁷ The steering instruments for retail trade projects above the local level are presently relatively weak.

7. Republic of Austria

The planning system in Austria is characterized by the country's federal structure. The fundamental competence for the settlement of retail trade projects lies with the nine federal states. The federal government has relatively little competence in the field of spatial planning, for so-called specialist planning in particular. The federal government is also competent for the regulation of "trade" so that the planning competence of the federal states may not regulate this area.

The federal states in Austria have made extensive use of their competence regarding the settlement of retail trade projects. The states have imposed different requirements on the municipalities regarding the settlement of retail trade projects. In some cases the federal states exceeded their competence and formulated regulations which the judiciary considered to regulate trade, during the first years of specific regulation. In the meantime the cases have been clarified and the federal states have extensive requirements in place imposing considerable limitations on the planning competence of the municipalities. In comparison to the other VITAL CITIES countries, the municipal planning competence in Austria is the weakest.

The federal states have taken specific measures in order to steer the settlement of retail trade enterprises. The most intensive form of influence can be found in the state of Burgenland, where the realization of a retail trade project depends on the approval of the government of that state. In the other federal states as well, stringent requirements are placed on municipalities regarding the planning of retail trade projects. For example, central locations are identified and the realization of a retail trade project tied to the corresponding function of the municipality. In a number of federal states there are upper thresholds regarding retail trade projects. In other federal states areas are designated in detailed spatial development programs which come into question as settlement areas for retail trade projects. An exception can be found in Vienna as a city

³⁷ Akademie für Raumforschung und Landesplanung (Ed.), *Deutsch-Slowakisch-Tschechisches Handbuch der Planungsbegriffe*, 1997, at 90.

and federal state. There is no planning level in Vienna above the local level, so that the question of regulation above the local level does not apply.

All in all, due to the strong regional level, Austria is a special case among the VITAL CITIES countries. The legal provisions are very detailed, vary from one federal state to another and leave almost no scope for planning competence on the part of municipalities. In a simplified summary, a distinction can be made in Austria between the following regulation systems to steer retail trade projects above the local level:

- Determination of criteria through a spatial development program for the individual federal states
- Declaration of approval based on a project-related regional development plan
- Project-related approval of shopping centres by the government of a federal state
- Possibility of refusal within the context of the adoption of land development or urban development plans

V. Results of the Comparison of Laws: Legal Structures for Steering

The studies by VITAL CITIES unveil the following scenario of planning systems in the countries analyzed: New shopping forms have established themselves within very short times in all VITAL CITIES countries, there is are competitive tendencies among municipalities as regards the siting of retail trade enterprises, and it has emerged that legal steering instruments are the most effective way of controlling competition in this respect.

1. Legal Steering Instruments in the VITAL CITIES Countries

Various legal steering instruments regarding the settlement of retail trade enterprises exist in the countries of VITAL CITIES. Basically speaking, three different approaches can be identified.

a) Central-Location Principle

Under the central-location principle the region is divided according to centres. Towns and cities are attributed with a superior function for a certain region. The aim of the central-location principle is to prevent sprawling urban developments in the region and to match projects such as large-scale retail trade projects to the function of the municipality within the region. This central-location principle is applied, for example, in the Federal Republic of Germany, and the steering impact is generally considered to be positive.³⁸ In other countries of Western Europe, the central-location principle was also made the foundation of spatial planning. During the 1990s, for example, the central-location principle was strengthened in Denmark with regard to retail trade projects. Since 1997 regional planning has been responsible for identifying retail trade space. Consequently, it is the responsibility of regional planning to determine central districts in the municipalities in which retail trade can be settled. Furthermore, regional planning also identifies space in which retail trade areas with a range of goods not relevant to the city centre can be defined. Under Danish law it is also possible for maximum space thresholds to be determined for individual retail trade businesses. Under planning law in Denmark there is a further limitation on the settlement of retail trade enterprises in that a detailed report has to be presented for the identification of space, showing the necessity of settling large-scale retail trade businesses.³⁹

In contrast, the central-location principle is devoid of any noteworthy significance in Central and East European countries. The reason is that the central-location principle was replaced in the course of the political transformation process in Hungary, the Czech Republic and the Slovak Republic. In these countries central steering and classification of municipalities was linked to central government dirigism and was therefore rejected. One result of VITAL CITIES is that due to these

³⁸ Blotevogel, article on „Zentrale Orte“, in: Ritter, Handwörterbuch der Raumordnung, at 1307-1315; Stiens/Pick, Die Zentrale-Orte-Systeme der Bundesländer, in: Raumforschung und Raumordnung 56 (1998), at 421-434; Blotevogel (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, Akademie für Raumforschung und Landesplanung, 2002.

³⁹ Priebes, Regionalplanung in Dänemark, Auswertung der aktuellen Planungspraxis und Folgerungen für die deutsche Regionalplanung, 2000, at 13-14.

negative connotations, the central-location principle is not the appropriate instrument to steer the development of retail trade in Central and East European countries.

b) Direct Control at the Regional Level

A second steering instrument in the countries of VITAL CITIES is in some cases direct control of the settlement of retail trade enterprises at the regional level. This model can also be found in several federal states of Austria, which have planning competence, while in other states the planning competence is located at the national level.

c) Inter-Municipal Cooperation

The third model of supra-municipal steering is inter-municipal cooperation. In the Federal Republic of Germany, for example, the urban planning of neighbouring municipalities has to be mutually coordinated. In other states it is planned that municipalities can join together into an association, or prominent municipalities exist to which the planning competence of smaller municipalities can be transferred (this is the case, for example, in Hungary).

d) Institutional Approach: Installation of a Mixed Commission

The fourth possible steering instrument is based on institutionalization. In recent years a commission was convened in Romania which is involved in the decision-making processes within the planning procedure and the permit procedure at an early point in time. The commission is composed of representatives of neighbouring municipalities and representatives of private business. It is not possible to realize a retail trade project in Romania without the approval of this commission. Since there is no experience so far on the work of the commission, it is not possible to forecast the impact this instrument will have.

2. Evaluation of Impact of Legal Steering

It should first be noted that legal instruments are essential in order to control competition among municipalities with regard to the settlement of retail trade projects. Informal instruments can contribute considerable to the strengthening

of town and city centres, however, such instruments can at the most flank the legal steering instruments. The analysis showed that the acceptable settlement of retail trade projects involves considerable difficulties in all countries of VITAL CITIES.

One of the reasons for this is that the central-location principle as a steering instrument is not consistent with the political objectives in a number of VITAL CITIES countries and therefore does not come into question as a legal steering instrument in these states (Czech Republic, Hungary, Poland, Slovak Republic). Secondly, it has emerged that in states such as Germany, which combine a number of steering instruments, the legal instruments are not always as successful as intended. This is due to the difficulties in applying the legal steering instruments. In practice, retail trade projects are often realized in conflict with legal requirements so that litigation is almost inevitable.⁴⁰

A further factor is that a review of planning decisions in court cannot be ensured in many cases. This applies, for example, to the inter-municipal coordination of urban planning in Germany, which can only be enforced by the neighbouring municipality by way of a review in court, at considerable effort. Due to such subordinate and limited control of the planning instruments, their enforcement potential is weakened significantly.

3. Conclusions

The main result of the legal-comparative analysis is that the legal steering instruments have to be further developed. It has been established that legal steering instruments should be integrated into the planning and permit procedures at the earliest possible point in time. This is more likely to ensure that a lasting balance of interests can be achieved.

The comparison of laws established which participants will play an important role in the field of spatial planning in future. It is the municipal level which, albeit with marked nuances, is of focal significance to the steering of retail trade projects in all VITAL CITIES countries. The principle of decentralization has placed its particular mark on the post communistic countries in their

⁴⁰ Blotevogel (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, Akademie für Raumforschung und Landesplanung, 2002, at 280.

development since 1990.⁴¹ It is to be expected that this significance will remain unchanged in the coming years. The principles of municipal self-administration are an important result of the political changes in Central and East European countries so that municipalities will continue to play a central role in future.

As compared with the municipal level, the regional level is of far less significance in the field of spatial planning in Central and East European countries. The regional level was only established in several VITAL CITIES countries in the course of the negotiations for accession to the European Union, e.g. the Czech regions (kraje) which only exists since 2000, or the 16 Polish Woiwodschaften which were created in 1999 as the administrative level. This means that at the present time the regional level does not play an active role in the field of spatial planning in Central and East European countries. It should be taken into account that regional self-administration first has to familiarize itself with its responsibilities and develop its political self-understanding.

The influence of European law has grown enormously in all countries in recent years. The requirements of European law are gaining in significance in the area of spatial planning via the environmental sector and are also of increasing relevance to the steering of retail trade projects. By way of the obligation to conduct an assessment of environmental compatibility as established in the EIA and SEA Directives, the basis for a unified legal framework in Europe has been established. Since retail trade projects fall within the scope of application of the Directives via Annex II, the obligation to conduct an assessment of environmental compatibility is an instrument in order to examine the impact of retail trade projects also beyond the territory of an individual municipality.

VI. Categorizing the Results of VITAL CITIES: New Structures for Setting Standards in Europe

VITAL CITIES endeavours to develop a European solution in order to steer retail trade projects. In CURTIS, VITAL CITIES proposes a model which can be integrated into the planning law in the countries analyzed. In order to maximize the steering powers of CURTIS, the structures currently governing planning law in

⁴¹ Wollmann, Changes shifts and ruptures in European local government systems „West and East“ – convergence or divergence?, Source: Internet www2.hu-berlin.de/verwaltung/down.htm (most recent retrieval 24/01/2006); Bohner, Entstehung und Bedeutung der Europäischen Charta der kommunalen Selbstverwaltung unter besonderer Berücksichtigung ihrer Rezeption in den Reformstaaten Mittel- und Osteuropas, in: Knemeyer (Ed.), Kommunale Selbstverwaltung in Ost und West, 2003, at 17-36 (26).

Europe have to be taken into account. Two developments are of particular importance in this respect. Firstly, it should be noted that the principle of decentralization is gaining in significance. Secondly, it has become clear that new structures for setting standards are being sought throughout Europe, which can be summarized under the term “Governance”. Both factors have to be taken into account when developing a new steering model.

1. CURTIS: A Uniform Planning Model for Europe

VITAL CITIES presents a uniform model in order to steer the settlement of retail trade projects. VITAL CITIES adopts a European approach. As the research within the context of the comparison of laws showed, this European approach is justified primarily by the increasing Europeanization of the relevant national planning systems and by the increasing significance of cross-border cooperation.

Within the course of the European integration process, national legal systems are increasingly governed by European requirements also in the area of planning law. This process commenced during the 1980s and flowed into reports on the coordination of spatial planning during the 1980s. In 1983 the European parliament for the first time presented a report on a European regional planning model (the so-called Gendebien Report).⁴² After this it was the European Council in particular which addressed the issue of European spatial development policies. At the European Conferences of Ministers Responsible for Regional Planning (CEMAT), there were regular consultations on European spatial planning policies. One result was the European regional Charta on spatial planning in the year 1984, and within the context of the Expo 2000 in Hannover, a pan-European approach to spatial planning was taken.⁴³

In recent years the spatial development policies led to the adoption of the European Spatial Development Perspective (ESDP) and the adoption of the SEA Directive. The INTERREG projects, the formation of Euroregions and initiatives on the part of the European Commission for the conclusion of tripartite agreements drive this development in one direction, namely towards a

⁴² Gendebien, Report drawn up on behalf of the committee on Regional Policy and Regional Planning on a European regional planning scheme, 1983.

⁴³ European Conference of Ministers Responsible for Regional Planning (CEMAT): Guiding Principles for the Sustainable Spatial Development of the European Continent, adopted at the 12th European Conference of Ministers Responsible for Regional Planning on 07/08 September 2000 in Hannover..

pan-European spacial development policy summarized under the term “territorial cohesion”. Under the term “territorial cohesion”, the strengthening of inner cohesion is discussed in Europe also from the territorial viewpoint. There are demands for European territorial cooperation, as already existing in the INTERREG projects, which should, however, be strengthened in the coming years.

The aim of territorial cohesion is to reduce the significance of national borders and to promote the understanding of Europe as a unified European region more intensely than before. The legal model developed within the context of VITAL CITIES is understood as a contribution towards territorial cohesion. It serves to present a unified planning model despite the marked differences in national planning structures. It is a reaction to demands from Brussels and from the new EU Member States to intensify the submission of supra-national planning models.⁴⁴

It should be taken into account in this respect that the particularities of the national legal systems have to be observed. It is therefore the responsibility of CURTIS, on the one hand, to develop planning structures which can be integrated in all countries analyzed, and on the other hand to present a model which does not encroach on national competence. Through the integration of CURTIS, better transparency and more effective steering of retail trade projects within Europe can be achieved. In order to enable successful implementation into national legal systems, the main trends in planning law in Europe in recent years have to be taken into account, which will also exercise a decisive influence on European planning structures in future.

2. Decentralization of Spatial Development

In recent years the European Commission devoted additional attention to the status of municipalities and regions within the integration process. This was triggered by the White Paper on European Governance dating from 2001, in which the Commission adopted the goal of ensuring a better acceptance of European politics.⁴⁵

⁴⁴ Cullingworth/Nadin, *Town and Country Planning in the UK*, London, 2003, at 85.

⁴⁵ European Commission, *White Paper on European Governance*, COM (2001) 428 of 25 July 2001.

The previous manner in which the European Union worked, according to the results of the research, did not permit appropriate interaction between the various levels within the European Union. So far the integration of the regional and municipal levels into EU politics primarily took place via national administrations. This was to change in favour of the direct involvement of the municipal and regional levels in future.⁴⁶ The declared aim was to grant additional flexibility to the relevant municipal and regional powers when implementing European law. This was to apply especially to legal provisions and programs with marked territorial implications.

On the basis of this analysis, one may expect European politics to be devoted more intensely to the principle of decentralization during the next few years.⁴⁷ This estimation was formulated very clearly within the context of the discussions on the White Paper on European Governance.⁴⁸ Endeavours to achieve deregulation and liberalization strengthened local powers. Decentralization enabled more flexible reactions to new situations and NGOs could be better integrated. One could also observe that the necessity of decentralization in EU politics would increase due to the expansion of the EU. These factors strengthen the “Zeitgeist” in Europe which endeavours to achieve the decentralization of administrative responsibilities in various countries. Expressly mentioned are the countries Poland and Romania, but also the U.K and Belgium, where such tendencies can be observed. The advantages of decentralization are considered to be increased flexibility and the particular effectiveness of decentral politics.

The first proposals as to how decentral politics can be structured are mentioned in the White Paper on European Governance and in the meantime have been taken up by the European Commission. In order to achieve direct international interaction between the European level and the municipal/regional level, in 2002 the European Commission proposed the conclusion of target-based tripartite agreements between the EU, its Member States and their regional and

⁴⁶ European Commission, White Paper on European Governance, COM (2001) 428 of 25 July 2001, at 1.

⁴⁷ European Commission, Second Cohesion Report, COM (2001) 21 final, of 31 January 2001; Burgi, in: Streinz, Kommentar EUV/EGV, 2003, Art. 263 EGV, note 9; Schmal, Europäisierung der kommunalen Selbstverwaltung, in: DÖV 1999, at 852-861.

⁴⁸ European Commission, White Paper on European Governance, Report by Working Group 3b, Decentralisation – Better Involvement of national regional and local actors, June 2001.

local entities.⁴⁹ Such tripartite agreements are to ensure that sub-national authorities are obliged to implement certain measures. The aim is so counteract any centralization of administrative competence.

Such discussions at the European level prove that in future one has to expect decentralization tendencies to place a stronger mark on legal developments in Europe than was previously the case.⁵⁰ This applies firstly to the institutional representation of municipalities and regions, which so far takes place primarily via the Committee of the Regions (Art. 263, EC Treaty).⁵¹ However, this also applies to the involvement of local players in the implementation of European law.⁵²

3. Strengthening the Regional Level

A second development element is the fact that the significance of the regional level in planning processes is growing in the course of the European integration process. This also applies to countries in which so far the regional level has not played a particularly important role in national planning systems. For example, in the course of the negotiations on accession to the European Union in Central and East European countries, the establishment of a regional level was made a prerequisite; in other European countries as well, e.g. the Scandinavian countries, the regional level was strengthened in the course of the European integration process.⁵³

This strengthening of the regional level is consistent with the definition of competence between the European Union and its Member States as adopted at

⁴⁹ Communication from the European Commission, A framework for target-based tripartite contracts and agreements between the Community, the States and regional and local authorities, COM (2002) 0709.

⁵⁰ Kotzur, Grenznachbarschaftliche Zusammenarbeit in Europa, 2004, at 95-103.

⁵¹ Burgi, in: Strainz, Kommentar EUV/EGV, München, 2003, Art. 263, notes 1-3; Schmal, Europäisierung der kommunalen Selbstverwaltung, in: DÖV 1999, at 852-861 (858); Ehlers, Steuerung kommunaler Aufgabenerfüllung durch das Gemeinschaftsrecht, in: Erichsen (Ed.), Kommunale Verwaltung im Wandel 1999, at 28; Rechlin, Die deutschen Kommunen im Mehrebenensystem der europäischen Union – betroffene Objekte oder aktive Subjekte?, WZB Discussion Paper SP IV 2004-101, 2004, at 30-38.

⁵² Schladebach, Regionen in der Europäischen Union – Perspektiven des europäischen Verfassungsvertrages, in: LKV 2005, at 95-99; Wittling, Raumordnung der Zukunft – zwischen nationaler Gestaltung und europäischer Einbindung, in: Akademie für Raumforschung und Landesplanung, Zukunftsforum Raumplanung, 2002, at 11; Arzeni, Local and regional governance and globalisation. Logic trends and challenges in Europe, in: Guerrieri/Scharrer (Eds.), Global governance regionalism and the international economy, 2000, at 257-277 (265-268); Evans, Regional dimensions to European governance, in: ICLQ 52 (2003), at 32-33.

⁵³ Böhme, Nordic Echoes of European Spatial Planning: Discursive Integration in Practice, 2002, at 217.

the summit meeting of Nice in December 2000. The “Declaration on the Future of the Union” contains statements on how to comply with the principle of subsidiarity and how Member States can monitor compliance with that principle.⁵⁴ In this respect the regions in Europe played a central role in realizing the principle of subsidiarity.

There are a multitude of possible definitions for the term region. Generally speaking, a region is understood to be a definable, coherent area of average dimensions within a certain territory, which area can be defined on the basis of certain features. The Latin meaning of “regio” is direction, area, district, region.⁵⁵ In the European context a region is understood to be “an area which geographically speaking forms a definite unit or a similar complex of areas with a closed make-up, the population of which is characterized by certain common features which are to be preserved and further developed so as to advance cultural, social and economic progress.”⁵⁶

It becomes clear from these broad definitions that the term “region” is not used in a uniform manner in Europe. The formation of a region can vary markedly from Member State to Member State. It should, however, be noted that the realization of regional autonomy within the European integration process is gaining in significance. Regions are becoming “guiding principals of government organization” in Europe. Regionalization as a decentral organization principle within the European process is therefore gaining in significance, also with regard to spatial development.⁵⁷

4. The Concept of Regional Governance

The strengthening of the municipal and regional levels as well as the increasing significance of European requirements lead to new standardization structures which can be described as standardization within a multilevel system. In the area of spatial development as well, forms of acting through discussion are also

⁵⁴ Council of Europe, Nice Summit 07-09 December 2000. Presidency Conclusions, Declaration on the Future of the Union (Declaration No. 23 on the final agreement) OJ 2000 No. C 80/1.

⁵⁵ Sinz, Artikel Region, in: Akademie für Raumforschung und Landesplanung (Ed.), Handwörterbuch der Raumordnung, 2005, at 919-923.

⁵⁶ According to the definition of the European Parliament on the Community regionalisation map dating from 1988, cited according to: Kotzur, Grenznachbarschaftliche Zusammenarbeit in Europa, 2004, at 92-93.

⁵⁷ Kotzur, op. cit., at 94-95.

gaining in importance.⁵⁸ These new standardization structures are labelled by the term “governance”, and with regard to spatial development in Europe the concept of “regional governance” is of particular importance.

The term “governance” is not susceptible to a conclusive definition.⁵⁹ The term originates from the field of economics and appeared in U.S. economics teaching books from the 1930s onwards. In its original interpretation it refers to the fact that in addition to the market, the organization of enterprises is crucial to the realization of efficient business transactions. This interpretation of the term prevails today in discussions about “corporate governance”. The under this heading discussions take place as to what the organization and management structures between the proprietors and the management of an enterprise are to look like.

From the 1990s onwards the term rapidly spread to other areas of politics and the economy, and in the meantime has entered legal language.⁶⁰ It was initially used in the international environment in the area of political sciences. Under the term “global governance” structures are developed for international politics oriented towards the interaction of governments, administration and transnational players. From the international level the term was transported to other areas of political sciences and now serves to describe forms of political steering and coordination both within and outside the state. The White Paper on European Governance contains a discussion on what a reform of European governance should look like.⁶¹

The term governance has had a rapid career within a very short time. It designates succinctly the loss of significance of state steering to be observed in the course of internationalization and globalization. Yet it also expresses the fact that standardization within a multilateral system calls for new

⁵⁸ Blotevogel, Zum Verhältnis des Zentrale-Orte-Konzepts zu aktuellen gesellschaftspolitischen Grundsätzen und Zielsetzungen, in: idem (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, 2002, at 17-23.

⁵⁹ On the history of the term: Benz, Governance - Modebegriff oder nützliches sozialwissenschaftliches Konzept?, in: idem (Ed.), Governance – Regieren in komplexen Regelsystemen, 2004, at 11-28 (15).

⁶⁰ König, Öffentliches Management und Governance als Verwaltungskonzepte, in: DÖV 2001, at 617-625.

⁶¹ European Commission, White Paper on European Governance, COM (2001) 428, July 2001; Jachtenfuchs/Kohler-Koch, Governance in der Europäischen Union, in: Benz (Ed.), Governance – Regieren in komplexen Regelsystemen, 2004, at 77-101; Evans, Regional dimensions to European governance, in: ICLQ 52 (2003), at 21-51 (23).

approaches.⁶² The governance concept proceeds from the observation that to an increasing extent various levels cooperate in setting standards so that private players, in particular, are involved in this process. To this extent the term designates changes in the state which involve the catchwords self-steering, public private partnership and the transition to an activating state.⁶³ With regard to planning law, these new approaches mean that planning structures will become more flexible and that a larger scope for decision-making will arise when negotiating planning decisions.⁶⁴

The term governance has already received an independent meaning with regard to standardization in the area of spatial development. One speaks of “regional governance”: Regional players such as municipalities, representatives of chambers of commerce and of business, and state participants, act increasingly within networks and the setting of standards is thus characterized by cooperation among various parties.⁶⁵ An additional factor is that the EU subsidizing policies stress the regional level particularly. When granting financial aid, the European Union orients its efforts increasingly to integrative regional concepts without, however, interfering in detail decisions.⁶⁶ These tendencies also characterize building planning law, for example, in Germany.⁶⁷

The changing standardization structures to be observed throughout Europe mean with regard to VITAL CITIES that proposals for reforming planning systems should be oriented to decentral negotiation processes. If the observation is correct that interaction among various participants beyond the borders of the public sector is gaining in importance and that regions are

⁶² Benz, Governance – Modebegriff oder nützliches sozialwissenschaftliches Konzept?, in: idem (Ed.), Governance – Regieren in komplexen Regelsystemen, 2004, at 11-28 (17).

⁶³ European Commission (Ed.), Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions, COM (2004) 327 final, of 30 April 2004; Guerrieri/Scharrer (eds.) Global governance, regionalism and the international economy, 2000.

⁶⁴ Cullingworth/Nadin, Town and Country Planning in the UK, 2003, at 85.

⁶⁵ Fürst, Regional Governance, in: Benz (Ed.), Governance – Regieren in komplexen Regelsystemen, 2004, at 45-64; Frey, Regional Governance zur Selbststeuerung territorialer Subsysteme, in: Information zur Raumentwicklung 2003, at 451-462; Fürst, Steuerung auf regionaler Ebene versus Regional Governance, in: Informationen zur Raumentwicklung 2003, at 441-450; Fürst, Regional Governance – Ein neues Paradigma der Regionalwissenschaften?, in: RUR 2001, at 370-380; Benz, Art. Governance, in: Ritter, Handwörterbuch der Raumordnung, 2005, at 404-408.

⁶⁶ Akademie für Raumforschung und Landesplanung, Regionaler Flächennutzungsplan, Rechtliche Rahmen und Empfehlungen zur Umsetzung, 2000, at 16.

⁶⁷ Hollbach-Grömig u.a., Interkommunale Kooperation in der Wirtschaft- und Infrastrukturpolitik, 2005, at 6-7.

gaining in significance due to globalization, then future steering instruments will have to be oriented to the structures described under the term regional governance.

VII. CURTIS: Comprehensive Urban Retail Trade Improvement Strategy

On the basis of the comparative law results and taking into account the structures of decentralization and “regional governance”, a steering concept was presented for realization in the VITAL CITIES countries. This scheme bears the name CURTIS, Comprehensive Urban Retail Trade Improvement Strategy. The object of CURTIS is, firstly, to provide political decision-makers with a guiding model of planning development and, secondly, to illustrate how this example can be realized following implementation in national legal systems.

1. CURTIS: An Example of How to Steer Retail Trade in Europe

Guiding models provide orientation points for spatial planning.⁶⁸ This means that politically desirable situations are stipulated in the planning requirements. Such models have not relinquished their justification even within the increasingly consultative regulation procedures. Rather, they ensure that a framework is set within which a solution oriented to a consensus can be found. Guiding models thus achieve the status of an orientation point for the participants.

VITAL CITIES is oriented to the European model of the “Compact City” as agreed by the ministers competent for spatial planning in 1999 within the European Spatial Development Concept (ESDP).⁶⁹ According to this, regionally well-balanced spatial development has to be oriented to a polycentric development model. Through ESDP a decentral settlement structure is stipulated with a graduated ranking of cities and towns. The European Spatial Development Concept emphasizes with regard to sustainable urban development that there has to be control over the expansion of towns and

⁶⁸ Jessen, article on „Leitbilder der Städteentwicklung“, in: Handwörterbuch der Raumordnung, 2005, at 602-608; Akademie für Raumforschung und Landesplanung (Ed.), Regionaler Flächennutzungsplan, Rechtliche Rahmen und Empfehlungen zur Umsetzung, 2000, at 15.

⁶⁹ Schmitz et al. (Ed.), Europäisches Raumentwicklungskonzept, 2000; Gatawis, Steuerung der nationalen Raumordnung durch das ESDP und durch Fördermittel der EG, in: UPR 2002, at 263 et seq.; Ritter, Europäische Planungsverfahren, in: Akademie für Raumplanung und Landesplanung (Ed.), Handwörterbuch der Raumplanung (2005), at 241-246; Jarass, Gemeinschaftsrechtliche Determinanten der Planungshoheit, in: Erichsen, Kommunale Verwaltung im Wandel, 1999, at 46-47.

cities. To this end the Member states are to orient their efforts according to the “Compact City”. This also means that the extension of settlement areas has to be minimized within the framework of a prudent siting and settlement strategy.⁷⁰

The VITAL CITIES project demonstrates how this objective can be achieved by steering retail trade structures. The development of shopping centres in greenfield locations is a pan-European phenomenon which speeds up the process of sprawling urbanization. The settlement of large-scale retail trade projects at non-integrated locations is not consistent with the guiding model of the European Spatial Development Concept and therefore has to be prevented. Formulated positively, this objective means that strengthening inner city retail trade contributes to the realization of a commercial development compatible with the region. VITAL CITIES developed the following guiding model in this respect:

- The capacity of a “Compact” inner city area with inherent growth to function is a binding model for spatial development in Europe. Vibrant town and city centres are to be preserved and furthered.
- It is recognized that the settlement of large-scale retail trade enterprises in non-integrated sites can be harmful to town and city centres.
- It is therefore necessary to steer the settlement of large-scale retail trade projects. It is important to ensure that the settlement of such projects only takes place at integrated sites.
- The legal steering instruments available are to be applied accordingly.

On the basis of these standards for sustainable regional spatial development, the model of the “Compact City” is to be realized with regard to retail trade.

2. Involving the Participants at an Early Point in Time: Obtaining Additional Flexibility in Planning Law

The survey of the steering instruments in the VITAL CITIES countries has shown that there are some steering instruments available, but that in practice

⁷⁰ Europäische Kommission (Ed.), ESDP Europäisches Raumentwicklungskonzept, 1999, at 23.

they fail, at least in some cases. In some cases there are considerable divergences between the purpose of the instruments available and the actual results. For this reason the main focus has to lie on finding planning instruments for the future which seek a balance of use from the outset and which tie in the participants at the earliest possible stage of planning.⁷¹

Through the increased flexibility of spatial planning, the aim is to involve the affected parties in the planning process at the earliest possible point in time, i.e. already at the time when fundamental issues are to be decided. In this respect the aim is to bind the various interest groups by contract in order to ensure the results of negotiations. Within the process the state is to take the role of both determining and monitoring regulations. The decisions as such are to be negotiated among the concerned parties themselves and are to be set out by contract. Through this increased flexibility of planning law, the aim is that the increasingly acute conflicts of interests concerning site locations in the course of internationalization and globalization can be better resolved.⁷²

3. New Forms of Cooperation: Supra-Municipal Retail Trade Concepts

The developments of decentralization and modified standardization structures indicate that the formulation of standards is increasingly organized within networks in which very varied participants are involved. With regard to the steering of retail trade projects, this means that as many participants possible are to be involved in the standardization process. It is important to balance the competition among municipalities by initiating inter-communal cooperation.

a) Inter-Municipal Retail Trade Concepts

Retail trade concepts are one possibility of achieving this involvement.⁷³

Retail trade concepts above the municipal level have the advantage that a

⁷¹ Frey, Regional Governance zur Selbststeuerung territorialer Subsysteme, in: Informationen zur Raumentwicklung, 2003, at 451-462.

⁷² Knieling/Weick, article, Regionale Entwicklungskonzepte Strategien und Steuerungswirkungen, in: Handwörterbuch der Raumordnung, 2005, at 928-933; Keim, Steuerungstheoretische Grundlagen für regionale Entwicklungskonzepte, in: idem et al (Eds.), Regionale Entwicklungskonzepte Strategien und Steuerungswirkung, 2002, at 1-9 (6-7); Dehne, Regionale Entwicklungskonzepte – Begriffsbestimmung und Funktionen, in: Keim, Steuerungstheoretische Grundlagen für regionale Entwicklungskonzepte, in: idem et al (Eds.), Regionale Entwicklungskonzepte Strategien und Steuerungswirkungen, 2002, at 24-33.

⁷³ Blotevogel (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, Akademie für Raumforschung und Landesplanung, 2002, at 225.

division of responsibilities among the municipalities can be agreed. By taking into account links among the municipalities and sites, it is thus possible to create a more convincing basis for a decision regarding the settlement of large-scale retail trade projects. Furthermore, such a concept can help achieve a more pro-active strategy of planning above the municipal level, which has a larger scope for manoeuvre due to the identification of development potential and site offers within the region as a whole as compared with individual reactions to enquiries made by individual investors.⁷⁴ Such interregional retail trade concepts enable business planning to be linked with urban development plans. Retail trade concepts should not just impose restrictions, but should also contain suitable site offers for investors. This guarantees the expedition of a desired investment.

Supra-municipal retail trade concepts can be drawn up under civil law or public law. The degree of institutionalization of such concepts can vary considerably. The spectrum ranges from voluntary undertakings among the municipalities participating to legally binding contracts which, within the context of what is permitted by law, determine municipal planning competence within their territory of application.

b) Advantages of Supra-Municipal Retail Trade Concepts

Since the municipalities are of focal significance within the planning system of the VITAL CITIES countries, the VITAL CITIES concept starts at the local level. Municipalities compete against one another for retail trade as a branch of business. Large-scale retail trade projects in particular mean increased income and a larger offer of jobs for a municipality. Due to the internationalization of retail trade structures as discussed in Chapter I, municipalities and regions compete with one another not only at the national but also at the European level. The VITAL CITIES model aims to balance this competition from the outset. On principle, there are two possibilities in this respect:

- Strengthening the regional level: By transferring planning authority to the regional level it is possible to effectively steer the settlement

⁷⁴ Blotevogel (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, Akademie für Raumforschung und Landesplanung, 2002, at 258.

of retail trade projects. Examples of this can be found in Germany, e.g. in the regions of Stuttgart, Frankfurt and Hannover.⁷⁵

- Inter-communal cooperation: In the sense of the autonomous steering of decision-making processes, inter-communal cooperation is the second possibility of steering competition among communities.⁷⁶

According to the VITAL CITIES results, the decentralization tendencies in the countries examined are stronger than the strengthening of regional competence. This applies especially to the Central and Eastern European countries. In these countries the regional level has only recently been created and efforts to transfer planning competence to that level do not appear very promising according to the VITAL CITIES research results.

For this reason, VITAL CITIES is in favour of seeking a balance through inter-communal cooperation. To this end a scheme is being developed as to how such cooperation between municipalities can lead to the integrated settlement of retail trade projects.

It should be stressed that the legal forms of this cooperation can be very different under the various legal systems. In Germany, for example, there are a large number of cooperation possibilities ranging from organizations formed under private law, communal working groups, agreement under public law, special-purpose associations and communal institutions governed by public law.⁷⁷ A further factor is that the requirements of inter-communal cooperation in the countries investigated are governed by different legal requirements. Since the VITAL CITIES

⁷⁵ Gafron, Reduzierte Flächen in Inanspruchnahme durch interkommunale Kooperation?, 2004; Jochum, der "Stadtkreis": ein neues Modell zur Bewältigung interkommunaler Konflikte?, in: DÖV 2005, at 632-638; Akademie für Raumforschung und Landesplanung (Ed.), Interkommunale und regionale Kooperation, Variablen ihrer Funktionsfähigkeit, 1998; Koschny/Mensing/von Rohr, Weiterentwicklung der Zentrenstruktur in Verdichtungsräumen - Das Beispiel Nordraum Hannover, in: Standort - Zeitschrift für angewandte Geographie 1998, at 12-20.

⁷⁶ Spannowsky/Borchert, Interkommunale Kooperation als Voraussetzung für die Regionalentwicklung, 2003; Bunzel/Reitzig/Sander, Interkommunale Kooperation im Städtebau, 2002.

⁷⁷ Spannowsky/Borchert, Interkommunale Kooperation als Voraussetzung für die Regionalentwicklung, 2003, at 89-138; Keim, Steuerungstheoretische Grundlagen für regionale Entwicklungskonzepte, in: idem et al (Eds.), Regionale Entwicklungskonzepte Strategien und Steuerungswirkungen, 2002; Baumheier, Langzeitaufgabe Kooperation. Das Regionale Entwicklungskonzept der Gemeinsamen Landesplanung Bremen/Niedersachsen, in: RuR, 1997, at 192-198.

scheme is a universal steering model, no specific proposal is made regarding the legal form to be chosen. Rather, structural elements are specified in order to enable a consensus to be reached among the communities.

Supra-municipal retail trade concepts have the advantage that large-scale retail trade projects can be determined at such sites within a consensual process for the parties affected. This anticipates conflicts between the municipalities, which do not then arise after urban development plans have already been drawn up. Rather, the consensual preparation of retail trade concepts means that such concepts can form the basis of urban development plans so that potential conflicts can be discussed among the participants at a very early point in time. The result of this is better planning certainty for enterprises and the avoidance of conflicts.⁷⁸ Inter-municipal court proceedings in particular, which take place in Germany on the basis of a subsequent review of urban development plans, can thus be avoided for most part. In this manner supra-municipal retail trade concepts also contribute to the expedition of the planning and permit procedures.

The following advantages of regional retail trade concepts should be mentioned:

- Achieving planning certainty: By involving the participants at an early point in time it is possible to achieve a large degree of consensus as regards the settlement of retail trade projects. Conflicts are coordinated at an early stage so that a site on which agreement can be reached is available for investors from the outset.
- Simplification and expedition of procedures
- Active settlement strategy: Supra-municipal retail trade concepts ensure that the planning municipality itself can determine the settlement process of retail trade projects. The municipalities agree with one another on suitable sites and thus offer a clear basis for

⁷⁸ Blotevogel (Ed.), Fortentwicklung des Zentrale-Orte-Konzepts, Akademie für Raumforschung und Landesplanung, 2002, at 260.

decisions to be taken by investors. Site selection is determined by the municipalities and not by investors.

- Reduction of space required: Supra-municipal retail trade concepts ensure that the relevant projects are established at integrated sites. This means that space utilization for the settlement of large-scale retail trade projects can be reduced.
- Strengthening town and city centres: Integrated settlement ensures that the focus is placed on town and city centres as the centre of urban life.
- Ensuring supplies close to one's place of residence: By drawing up supra-municipal retail trade concepts it is possible to ensure that supplies for citizens remain an important issue with regard to the settlement of retail trade projects.

c) Formulating Supra-Municipal Retail Trade Concepts

In order to achieve the objective of a solution in consensus, it is important for the relevant retail trade concepts to meet the following criteria:

- Involvement of a large number of participants

The acceptance of the agreements made depends essentially on acceptance by the parties affected. For this reason supra-municipal retail trade concepts should involve not only the relevant municipalities, but in addition private business, chambers of commerce and retail trade associations. It is thus possible to ensure that the knowledge of the region flows into preparation of the concepts.

- Binding nature of retail trade concept

The effectiveness of a retail trade concept depends essentially on the binding nature of the solution found on the participating municipalities, for a set period of time. For this reason it is important to regulate by law that the urban development plan and

the corresponding building permit are based on a binding retail trade concept. It is thus possible to ensure that municipalities are interested in drawing up supra-municipal retail trade concepts. Through the economic pressure such a condition involves, the planning municipalities will be motivated to work towards supra-municipal retail trade concepts.

The retail trade concept should be binding. However, the binding nature should not lead to irreversible developments within municipalities. For this reason concepts always have to be updated and adjusted.

As an alternative to binding retail trade concepts, so-called moderation procedures also come into question. This term includes concepts which emphasize a procedure of consensual negotiation. For example, the participating communities could undertake mutually to notify planned new settlements before entering into the formal planning procedure. Following such notification an assessment of the planned site could take place through expert opinions. Should reservations arise regarding the suitability of the site, a round table composed of members of the communities affected, retail trade chambers and authorities will make a decision regarding the settlement. Such a round table should be moderated at the regional level. If necessary, alternative sites should be examined within the context of such a moderation procedure.⁷⁹

- Coordination of supra-municipal retail trade concepts

It is the responsibility of the regional level to coordinate the development of retail trade concepts.⁸⁰ It is the responsibility of the regional level to ensure that the concepts form the basis for the planning and approval of large-scale retail trade projects. In addition, it is the responsibility of the regional level to determine the regions for which supra-municipal retail trade concepts are to

⁷⁹ The results so far have shown that over 90% of settlement requests can pass through the formal proceedings rapidly on the basis of this consensus: Blotevogel, *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, 2002, at 289.

⁸⁰ Spannowsky/Borchert, *Interkommunale Kooperation als Voraussetzung für die Regionalentwicklung*, 2003, at 202.

be drawn up. In this respect networks of cities/towns can be established.⁸¹

- Motivation to cooperate

Instruments also have to be developed in order to establish a balance between the participating communities. For example, the creation of financial compensation payments is under discussion in order to provide an incentive for inter-communal cooperation.⁸² Such communal financial compensation would mean with regard to the settlement of retail trade projects that the site community permits the other communities to participate in the financial benefits of the settlement. Other approaches provide for a cooperation fund as an incentive for the development of supra-municipal concepts.⁸³ In this manner the financial disadvantages sustained by individual communities are to be compensated. According to the proposal, the participating communities are to decide by common consent on the application of the financial resources. The potential imbalance affecting major communities due to a large number of smaller communities is to be prevented by a corresponding barring clause.

So far there is no practical experience as to how such an incentive structure can be created for municipalities. It became clear in 2002 that there is a need for research into the area of inter-communal cooperation.⁸⁴ In this respect planning law is presently still at an early stage of development. The changes in standardization and the strengthening of decentralization discussed above are recent

⁸¹ Blotevogel (Ed.), *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, 2002, at 234; Spangenberger, *Das Verhältnis von Regionalplanung und Bauleitplanung : Möglichkeiten der Weiterentwicklung unter besonderer Berücksichtigung informeller regionaler Kooperationsansätze*, 2003, at 223; Hollbach-Grömig, *Interkommunale Kooperation in der Wirtschaft- und Infrastrukturpolitik*, 2005, at 34-39.

⁸² Spannowsky/Borchert, *Interkommunale Kooperation als Voraussetzung für die Regionalentwicklung*, 2003, at 164-165; Blotevogel (Ed.), *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, 2002, at 251; Bundesforschungsanstalt für Landeskunde und Raumordnung (Ed.), *Städtenetze: Vernetzungspotentiale und Vernetzungskonzepte*, 1996.

⁸³ Blotevogel (Ed.), *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, 2002, at 258.

⁸⁴ Danielzyk, *Forschungsbedarf*, in: Blotevogel (Ed.), *Fortentwicklung des Zentrale-Orte-Konzepts*, Akademie für Raumforschung und Landesplanung, 2002, at 310-314.

developments which have only resulted in practical experience in some cases. In Germany, the regions of Stuttgart⁸⁵, Hannover⁸⁶, East Westphalia-Lippe⁸⁷ and the region of East Frisia⁸⁸ should be mentioned in this respect.

Future research is to show how effective consensual retail trade concepts can be developed in practice. In this respect there is a lack of not only national experience, but also of an exchange of views at the European level.⁸⁹ VITAL CITIES draws the conclusion that in the coming years spatial planning structures will develop in the direction of supra-municipal retail trade concepts, as discussed. It is necessary to fine-tune the legal instruments and to gain practical experience.

d) Procedure for Approval of Retail Trade Concepts

Procedures have to be developed for the implementation of supra-municipal retail trade concepts which ensure that such concepts steer the development of retail trade. It is therefore necessary for retail trade concepts to form the basis of building permits for retail trade projects. The structure of such procedures should stipulate the notification of retail trade projects of certain dimensions to the regional level. During the permit procedure it should be examined whether the project is consistent with the requirements of the supra-regional retail trade concept. If a divergence is ascertained, if appropriate a mediation procedure should be initiated in which the disputed issues are resolved. The mediation procedure should be accompanied by the regional level. The participants involved in drawing up the supra-municipal retail trade project should be involved in the procedure.

⁸⁵ Where there are presently negotiations on a continuation of the regional plan with the emphasis on major retail trade projects, see: www.region-stuttgart.org.

⁸⁶ Regional trade concept for the Hannover region, October 2001.

⁸⁷ Regional trade concept for the region of East Westphalia-Lippe dated 04.12.2003.

⁸⁸ Regional structure conference for the region of East Frisia, inter-communal agreement on the development of large-scale retail trade, January 2004.

⁸⁹ As regards France: Wollmann, The system of development planning and development control in France in: Internet www2.hu-berlin.de/verwaltung/mithb.htm.

As regards constellations in which the project is to be settled at a non-integrated site or where the integration of the project is disputed, the planning municipality should be able to state why the retail trade project is to be approved at the specific site. The planning community bears the burden of proof that there is no other suitable site within the region of the retail trade project. In particular, the planning municipality has to prove that no integrated sites are available.

e) **Monitoring**

The opinions on retail trade are limited in time. They are to be limited to a certain period from the outset. Within that period the validity of the findings has to be reviewed at regular intervals.

4. Implementing CURTIS

The “European Charta for a VITAL CITIES Network” was adopted on 12 May 2006 in Berlin at the final conference of the VITAL CITIES project, in order to implement CURTIS. The Charta is understood as a political declaration of intent, the object being to steer the development of retail trade in Europe in the coming years. The Charta was signed by representatives of private business and by representatives of politics. Through the Charta the results of VITAL CITIES are disseminated and placed in the political arena. In this manner VITAL CITIES contributed to the effective steering of retail trade in Europe.

European Charta "Network of VITAL CITIES"

With the Lisbon strategy, the European Union pursues the objective of becoming an example of economic, social and ecological progress. The mobilisation of the economic potential in the European regions and cities will be a significant contribution to the attainment of this objective. We regard retail trade as being of outstanding significance in this respect.

We welcome the endeavours of the ministers of the EU Member States responsible for spatial planning to augment the Lisbon strategy further by a territorial dimension. This agenda will include the crucial role played by retail trade as an important impetus for well-balanced spatial development. Where commerce is dynamic, strong cities and regional centres develop, radiating life into their surrounding areas and thus sustaining the partnership between town and country. Neither business nor politics alone can guarantee such a development. The key to success lies in the co-operation between all players.

In the Central and East European Member States, in particular, high rates of trade growth are expected to continue in the coming years. Retail trade in the other Member States is also seeking new concepts and entertainment-oriented forms of retailing that are more in tune with the wishes of the customer than before. Shopping centres will therefore continue to multiply and the trend towards internationalisation will persist.

Parallel to the international trends in retail trade, an international network of regions, towns and cities and retailers is also required. We are convinced that it is not the function of politics to intervene in these trends. The question arises, however, of where the changing structure of retailing just described can be carried into effect in a sustainable manner, where retailers can implement their new sales forms from the viewpoint of regional and urban planning. Politics must provide planning orientation in this respect. The towns and cities can best exercise their function of strengthening the regions if the space required for the further development of retail trade is provided within their centres.

We believe that greater responsibility has to be assumed by the regions, municipalities and NGOs such as chambers of commerce and retail trade associations. Regions, municipalities, retailers and business associations have a genuine interest in the sustainable settlement of retail trade businesses. However, the necessary steering instruments are often lacking. These instruments must be adapted and supplemented in accordance with modern requirements. New concepts aimed at co-operation between the parties concerned, while at the same time it is important to respect the existing planning culture and the existing legal

planning structures of individual states. The aim must be to grant greater local flexibility to regions and municipalities in conjunction with additional responsibility.

The obligation to establish binding retailing concepts on an inter-municipal basis, prepared by the municipalities in co-operation with NGOs such as chambers of commerce and retail trade associations, may be one way forward. Offers from the business community to contribute to this negotiation process should be accepted. The preparation of such retailing concepts should be assisted and monitored at the regional level. Retail trade projects should then be permitted at non-integrated sites only if the municipality concerned can prove that a more suitable location is not available.

This process will lead to a strengthening of municipal self-administration, to an intensification of inter-municipal co-operation and to the increased integration of retailers in urban and regional development planning processes. Last but not least, the territorial cohesion within Europe will thus be strengthened as well.

Signed in Berlin, 12 May 2006

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